104

WITNESS PROTECTION PROGRAMS IN AMERICA

Y 4.J 89/1:104/126

Witness Protection Programs in America, Serial No. 126,
November 7, 1996 (104-2 Hearing)

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

WITNESS PROTECTION PROGRAMS IN AMERICA

NOVEMBER 7, 1996

Serial No. 126

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WITNESS PROTECTION PROGRAMS IN AMERICA

THURSDAY, NOVEMBER 7, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 12:40 p.m., in Council Chambers, City Hall Building, 400 South Orange Avenue, Orlando, Florida, Hon. Bill McCollum (chairman of the subcommittee) presiding.

Members present: Representatives Bill McCollum, Robert C. Scott, Bob Barr, and Stephen E. Buyer.

Also present: Dan Bryant, majority counsel; Melanie Sloan, minority counsel; and Aerin Bryant majority professional staff member.

OPENING STATEMENT OF CHAIRMAN MCCOLLUM

Mr. MCCOLLUM. This hearing of the Subcommittee on Crime will come to order. I will ask everybody to be happy that we are here in the sunshine today. Our colleagues that have come down from the North tell me that the weather is not nearly so nice there. I welcome you to Orlando, gentlemen.

The oversight hearing of this subcommittee today is one that is of a very important nature to not only Florida and our area, but to the Nation. I extend a special welcome to everybody who is here. I want to express my special appreciation to Mayor Glenda Hood for letting us use these chambers today. We do not often have an opportunity as congressmen to sit in commission chambers, so my chair is not hiked up as high, and I do not get to look down as far. We are more with the people than we normally would be.

Our hearing today provides us with an opportunity to examine witness protection programs, one of the indispensable tools to combat violent crime. Successful prosecution of cases depends on the quality of evidence that the State can produce, as well as on the cooperative testimony of the witnesses.

In the cases of drug trafficking and criminal organizational activity, documentary evidence often is not available. In such cases prosecutors tend to rely on the testimony of witnesses who were involved in some facet of the illegal operation.

It has long been recognized that in order to prosecute drug traffickers and members of drug organizations more effectively, prosecutors must be able to encourage witnesses to testify and one of the important ways of doing so is by offering protection before, dur-

ing and even after the judicial proceedings when witnesses fear retaliatory action by defendants or associates.

Six States—Colorado, Maryland, Missouri, New Jersey, Rhode Island and Virginia—have enacted witness protection by statute. The Commonwealth of Puerto Rico also has a witness protection program. Certain States such as California, Iowa and New York have some form of a witness protection program that was established without any legislation.

State witness protection programs vary widely in program sophistication and formality. Some States have programs but have chosen not to fund them such as Virginia. Other States have no post-trial witness relocation capability. Even those programs that do have such a capability appear to vary a lot.

For example, it appears that most programs rarely relocate witnesses out of State while others, such as Puerto Rico, do so with some frequency. There is currently no Federal law addressing the interstate relocation of witnesses. As such, unless required by State law, programs are under no obligation to notify local law enforcement of relocated witnesses.

The potential problems associated with failing to provide notification were highlighted by the June 15th, 1996, incident in Osceola County. On this occasion, Florida Highway Patrol troopers and plainclothes Puerto Rico police officers moving a witness narrowly averted a shootout. The Florida troopers thought the officers from Puerto Rico were criminals posing as FBI agents, while the Puerto Ricans thought the Florida troopers were assassins sent to kill their witness.

As a result of this incident, discussions were initiated with the Puerto Rico Department of Justice leading to a memorandum of understanding to regulate the relocation of witnesses to Florida.

I was pleased to see the cooperation occurring between the Department of Law Enforcement in Florida and the Puerto Rican Department of Justice in developing this memorandum of understanding.

On a personal note, I appreciate the recent opportunities I have had to work with the law enforcement leadership in Puerto Rico. My trip to Puerto Rico this past August has only increased my resolve to fight for additional Federal drug interdiction resources to help restrict the flow of drugs moving through the eastern Caribbean and negatively affecting the Island of Puerto Rico, as well as our part of Florida.

I believe the Osceola incident should serve as a wake-up call for all of us. As criminal organizations become more organized and gangs proliferate, it is likely that States will be making greater use of witness protection programs. Consequently, we can expect more, not less, witness relocations in the future.

The Osceola incident should not cause us to call into question the use of witness protection programs; rather, it should encourage programs to be carefully constructed and developed and vigilantly monitored to ensure that public safety is in no way compromised.

This hearing is not being held with any predetermined plan in mind to introduce Federal legislation regulating the practice of Federal witness protection. Nevertheless, given the interstate nature of this practice, Congress has an interest in examining the

programs and asking questions that get to the bottom of incidents like the one in Osceola County.

In addition to hearing today from witnesses representing the State's perspective, we will have an opportunity to hear about the Federal Witness Protection Program. The Federal program was established in 1970 and plays a significant role in helping to combat organized crime, public corruption, and narcotic organizations.

More than 6,600 witnesses and 8,000 of their family members have been admitted into the program since its inception. The program's success has led to duplication in numerous other countries. The Federal program is noteworthy for its emphasis on protecting the relocation community from potential harm.

The process for reviewing applicant witnesses is rigorous and, in my view, a model. It includes a determination as to whether the witness' testimony outweighs any risk of danger to the public from the witness; psychological examination for all adults entering the program; a law enforcement assessment of the risk that the witness may pose to a new community; and the completion of a memorandum of understanding between the Department of Justice and the witness detailing what is expected of the witness while in the program.

I believe that the Federal Witness Protection Program can serve as a model to other States in developing their own programs, but I don't think we should expect that to be the exclusive domain of the Federal Government. Again, I want to emphasize we are here today to examine the entire spectrum of witness relocation and witness protection programs across State lines and in the Federal Government's aegis. We are not here with any predetermined disposition about outcomes whatsoever.

I am particularly impressed by the fact that there has been in our local media here in Orlando considerable focus on the incident itself in Osceola County, which is understandable, but perhaps there has come out of this an exaggerated sense that the Puerto Rican relocation program is unique. I don't think that it is. I think we are going to hear that today.

I think that we are going to hear that what we are facing with the interrelationships here could occur in any State in the Union, and between any number of States at any given time. And so it is important for us to take a look at this and determine if, indeed, Congress has a role to play and even if it doesn't, to have the opportunity as a fact-finding body to have a public exploration of these matters.

With that said, I would like to turn to my colleague, Mr. Scott of Virginia, who has come to join us and ask if he has an opening comment or two to make.

Mr. SCOTT. Thank you, Mr. Chairman. I do not have a complete statement, but I would like to thank you for welcoming us to Orlando, and we look forward to the testimony.

These witness protection programs are certainly essential in helping to get prosecutions that could not be possible without the witness protection program. But sometimes programs like this can get out of control. There are lots of different programs. Some protect witnesses just pretrial, some for a lifetime, and they are designed to increase public safety by getting convictions that would

not be possible otherwise. And I join you, Mr. Chairman, in making sure that the programs—these programs fulfill that goal without causing more harm than good.

Mr. McCollum. Thank you very much, Mr. Scott.

Mr. Buyer.

Mr. Buyer. Thank you, Mr. Chairman. I also thank you for having me in Florida, considering it was 35 degrees and raining this morning in Indiana. I want to talk about fairness and equity. You get to live in the sunshine while I get to return to snow tonight when I go back to Indiana. I called my wife and they expect snow flurries, so please enjoy Florida.

Mr. McCollum. We are glad you are down here to promote our public relations.

Mr. Buyer. I note that there is no exchange rate between the dollar in Indiana and Florida, so you like our money from the North.

I want to thank you for this hearing, Mr. Chairman. We were all involved in our campaigns across America when we got notification of the hearing down here, and so I was quick to ask what is it? What is going on? And the first reaction was that, well, there is a hearing because there is dumping of witnesses into Orlando from Puerto Rico. And, of course, that is an inflammatory word and it is provocative to our emotions. It compels you to immediately ask questions. Why wouldn't someone be notified? What kind of witnesses are they?

But also the word "dumping" can be very insensitive. Even if they were witnesses from Indiana coming down here, I would take offense to that. I would think that even people from Puerto Rico could take offense to such words as "dumping" because you do not want those words to tap or tie into any forms of tendencies of prejudice or anything like that. But I will say, you were very helpful and you sent out a lot of the statements and they were very helpful in preparing for this hearing, and I want to thank you for holding this hearing.

I have learned a lot before this has even begun and we will learn more here. I didn't know there was the lack of coordination among the States in the witness protection programs, let alone letting locals know when they are bringing a dangerous situation into a community. I think a lot of people in America do not realize this and they thought there was a unified judicial system with coordination and unification and we are finding out that it just is not so. So, Mr. Chairman, I thank you for holding this hearing.

Mr. McCollum. You are welcome. And I thank you for coming out of Indiana, the snowy region, to the sunny climes for this hearing.

Mr. Barr.

Mr. Barr. Thank you, Mr. Chairman. I appreciate—as my colleague from Indiana, I appreciate the materials that the subcommittee sent out. They have already been helpful. I have looked through them and as a former U.S. attorney, I am relatively familiar with the Federal program and also aware of some of the problems and lack of coordination. I appreciate the opportunity for this hearing and I am sure through some follow-up work that we will

be doing in the subcommittee and committee level this coming Congress we will get into that a little bit more.

I appreciate your comments that we are looking at this, as always through the subcommittee's business, with an open mind and looking to see what problems there are and whether there is indeed, as there is here, a proper Federal role that might assist in developing some better coordination from the interstate angle here of witnesses crossing State lines and being relocated to other jurisdictions.

I would like to say that I appreciate the opportunity to be here in the Chairman's jurisdiction, and I also appreciate the opportunity to see one of your former colleagues, my good friend from home, former Congressman Buddy Darden. As Yogi Berra said, it is deja vu all over again. So I feel doubly at home with you, Mr. Chairman, and seeing our good friend, Buddy Darden.

Mr. McCollum. Thank you. I was hoping you would mention Mr. Darden. We are glad to see him, too. Georgia is a next-door neighbor of ours and we are always happy to have Georgians come down here. Still, we are impressed more with the expenditure of money that comes from the northern climes.

With that in mind, I would like to introduce our first panel. We have two panels of witnesses today. Our first witness is Richard Callahan. Mr. Callahan began his 24-year career in public service as the assistant prosecuting attorney for the St. Louis Circuit Attorney's Office. Since that time, he has served as special prosecutor in the Cole County Prosecuting Attorney's Office and the Missouri Attorney General's Office. He is former President of the Missouri Association of Prosecuting Attorneys and the former Chairman of the Criminal Law Committee in the Missouri Bar Association.

Mr. Callahan is the elected prosecuting attorney for Cole County, Missouri, and a council member of the Criminal Justice Section of the American Bar Association. He served on the boards of directors of the Missouri Prosecuting Attorneys and the National District Attorneys Association. He is a graduate of Georgetown Law School.

Our second witness today is Miguel Gierbolini. Am I pronouncing that correctly?

Mr. Gierbolini. Correct.

Mr. McCollum. He currently serves as the Deputy Director of the Special Investigations Bureau of the Puerto Rico Department of Justice. Prior to his service for the Commonwealth in Justice, he worked as an attorney in the corporate department of O'Connell & Valdez in San Juan, Puerto Rico. He is a graduate of Boston College Law School and a former participant in the Program for Senior Executives in State and local governments, John F. Kennedy School of Government at Harvard.

Robert Cummings is the Assistant Commissioner of the Florida Department of Law Enforcement. He began his career with the FDLE in 1971 as a special agent. He progressed through the ranks holding a variety of supervisory positions, including Director of Criminal Investigations and Executive Investigations. He is a graduate of the FBI National Academy. He is past President of the National Alliance of State Drug and Organized Crime Committee—I should say State Drug Enforcement Agency and served on the Narcotics Committee and the Organized Crime Committee of the Inter-

national Associations of Chiefs of Police. He is a graduate of Florida State University and I welcome you today as well.

And with that, I would like to ask the witnesses to proceed. You may summarize your statements. The witnesses' statements will appear without objection in the record in full, or you may give any portion of your statement that you wish. I recognize Mr. Callahan to proceed first.

Mr. CALLAHAN. Thank you, Mr. Chairman. I won't refer to my statement. I think that is there in the record. I was actually hoping I could go third this morning, because—this afternoon, it is morning back in Missouri.

Mr. MCCOLLUM. I understand.

Mr. CALLAHAN. Because in looking through the statements I at least have the impression that the situation that developed here in Florida, and between Florida and Puerto Rico, is probably more unique than common to the rest of the prosecuting jurisdictions across the country.

Mr. MCCOLLUM. Mr. Callahan, you certainly do not have to go first. My staff was under the impression that you wanted to, and if that is not the case, I would be delighted to have Mr. Gierbolini explain the Puerto Rican situation and have the Floridian situation discussed if that would help you.

Mr. CALLAHAN. The advantage might be, I might be able to give more of a different perspective that is not unique to this situation, and with my contacts with the prosecutors.

Mr. MCCOLLUM. If Mr. Gierbolini has no objections, I will be glad to let him proceed first.

Mr. Gierbolini.

STATEMENT OF MIGUEL E. GIERBOLINI, DEPUTY DIRECTOR, SPECIAL INVESTIGATIONS BUREAU, DEPARTMENT OF JUSTICE, COMMONWEALTH OF PUERTO RICO

Mr. GIERBOLINI. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman and members of the committee. My name is Miguel Gierbolini. I am the Deputy Director of Special Investigations Bureau of the Puerto Rico Department of Justice. My duties include the supervision of more than 225 agents to conduct investigations of government corruption and organized crime. My office also manages Puerto Rico's victim and witness protection program.

On behalf of Attorney General Pedro Pierluisi, I appreciate the opportunity to appear and testify before you today about our victims of crimes and witness protection program. I request that my entire statement be entered into the record of this hearing.

Mr. MCCOLLUM. Without objection, it is so ordered.

Mr. GIERBOLINI. In 1986 the Government of Puerto Rico enacted our comprehensive victim and witness protection law. This statute establishes that the public policy of our government is to offer protection and assistance to victims of crimes and witnesses in judicial proceedings and related investigations.

The purpose of this policy is to secure their full cooperation and participation free from intimidation and harm. The law requires the Secretary for the Department of Justice, also known as Attorney General, to establish the program with the Division of the Special Investigations Bureau. It grants broad powers to agents as-

signed to the program, including the power to arrest, and the power to carry and wield firearms.

Among the services included in the program are the maintenance of a 24-hour emergency line for victims and witnesses, protection and transportation for victims and witnesses at their residence and places of employment, financial assistance and relocation services within Puerto Rico or to another community.

Our legislature appropriates sufficient funds each year to establish and maintain a staff of approximately 65 persons employed to support this program. Because Puerto Rico is a small island, we have unique circumstances that have caused us to develop a comprehensive strategy to deal with the problem of witness and victim intimidation.

Our island is less than 100 miles long, 35 miles wide and it is densely populated. This small geographical area coupled with the dense population severely limits our ability to conceal the identity or location of an endangered victim or witness.

Another unique feature of Puerto Rico is that our system of justice is almost completely unified. We do not have county and municipal law enforcement agencies comparable to those here in the States. With the exception of enforcing municipal ordinances and traffic laws, which is done by our municipal guards, all law enforcement personnel are State officials that ultimately report to a central police authority.

All prosecuting attorneys, criminal investigators and other police agencies are part of a unified system of justice which enforces Puerto Rico law. Due to these unique circumstances, we have developed a victim and witness protection program that is more comprehensive than other State and local programs in the United States.

The relocation of a victim or witness outside of Puerto Rico is only one of a number of services provided by Puerto Rico to protect victims and witnesses subject to its jurisdiction. The following is a list of the services that we provide: Protection to and from the courthouse; safe house protection; temporary hotel accommodations; an emergency victim and witness hotline; relocations within Puerto Rico; relocations outside of Puerto Rico; and other services to facilitate the goals of the program.

As you can see, the witness protection program of the Puerto Rico Justice Department is a comprehensive program that provides many services. Just one of these services is a relocation of victims and witnesses outside of Puerto Rico. The majority of victims and witnesses that are relocated leave Puerto Rico only after their participation in judicial proceedings has ended. The decision whether to relocate witnesses outside Puerto Rico is based on the following factors: The danger to the witness if he or she remains in Puerto Rico; whether the witness has relatives or friends outside the island.

Victims and witnesses have been relocated to several Florida cities since the inception of the program. During this time, 40 witnesses have been moved to the Orlando area. We have also relocated victims and witnesses to other States: Connecticut, Illinois, Kansas, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Tennessee, Texas and Wisconsin.

Of the more than 2,000 victims and witnesses who have been assisted by our program since 1987, only 329 have been relocated outside of Puerto Rico. Of those, 95 victims and witnesses have been relocated in the State of Florida. And as I stated earlier, 40 of those have been relocated in the Orlando area. Only five of those 40 victims and witnesses have prior criminal histories. To date, none of these victims and witnesses relocated in the Orlando area have been convicted of a criminal offense.

We believe that victims of crimes and witnesses who are relocated do not pose a security risk to their new community. In the great majority of cases, the relocated victims of crimes and witnesses have never participated in criminal activities. In all cases, these witnesses have agreed to cooperate with prosecutors to obtain major convictions before being relocated. This cooperation is completely voluntary and witnesses may leave the program at any time.

Despite the risk, witnesses stay in the program to secure convictions. Their willingness to continue in the program demonstrates their desire to be law-abiding citizens and productive members of their new communities.

Moreover, through interaction with these witnesses our officers develop a personal familiarity with each person. We do not relocate any victim or witness we believe poses a threat to a community.

While our statute does not require that we contact local law enforcement authorities in areas where witnesses are to be relocated, we usually contact local officials informally. In the Miami area, an FDLE lead officer has assisted us on many occasions. Similarly an FDLE officer has been helpful in ensuring that our agents secure suitable housing and obtain other services for witnesses in the Orlando area.

A United States Customs Service agent has also assisted our agents on several occasions. We are most grateful and appreciative for the cooperation we have received from the law enforcement community in Florida.

In September 1996, I met with Lance Newman, Assistant Special Agent in Charge of the Florida Department of Law Enforcement in Orlando and discussed formalizing our relocation procedures in the State of Florida. Governor Pedro Rossello of Puerto Rico received from Governor Lawton Chiles of Florida a letter and a proposed memorandum of understanding between the State of Florida and the Government of Puerto Rico, following these discussions on October 30, 1996.

While the specific details are being worked out, we are hopeful this document will be a useful device in clarifying the various responsibilities and obligations between Puerto Rico and Florida. We are developing a process that establishes one central point of contact in the State law enforcement agencies. This contact will be responsible for communicates and coordinating our efforts with all of the law enforcement authorities in Florida.

By centralizing our efforts in this manner, we can ensure that relocation information remains efficiently managed and confidential. The Government of Puerto Rico is supportive of such initiatives. We are hopeful our MOU with Governor Chiles will serve as a model for other States to use with each other.

Finally, we must specifically and directly reject the allegation that the Government of Puerto Rico has been dumping criminals into the Orlando area. A vast majority of the relocated witnesses and victims have no past criminal history. They are seeking a new start in life away from constant fear, intimidation and danger that has resulted from their cooperation with law enforcement authorities.

As citizens of the United States, they have full constitutional rights to travel to the United States and to seek safe haven from their past unfortunate circumstances. As citizens of the United States, these victims and witnesses are entitled to the same life, liberty and pursuit of happiness that all citizens enjoy.

In Puerto Rico we have taken the lead in addressing the very difficult and real problem of protected victims of crimes and witnesses to secure their participation in criminal prosecutions. Our Statewide program is a comprehensive approach to protecting law-abiding citizens who want to do the right thing by cooperating with the authorities, even when it means bringing great fear and disturbance into their own life.

We in Puerto Rico believe that if these citizens are willing to risk so much to bring criminals to justice, the law enforcement community should do whatever it can to ensure their safety. I thank the committee members for the honor of testifying and welcome any questions and suggestions you may have.

[The prepared statement of Mr. Gierbolini follows:]

PREPARED STATEMENT OF MIGUEL GIERBOLINI, DEPUTY DIRECTOR, SPECIAL INVESTIGATIONS BUREAU, DEPARTMENT OF JUSTICE, COMMONWEALTH OF PUERTO RICO

Mr. Chairman and Members of the Committee: my name is Miguel Gierbolini. I am the deputy director of the Special Investigations Bureau of the Puerto Rico Department of Justice. My duties include the supervision of more than 225 special agents who conduct investigations of government corruption and organized crime. My office also manages Puerto Rico's victim and witness protection program.

On behalf of Attorney General Pedro Pierluisi, I appreciate the opportunity to appear and testify before you today about our victims of crimes and witness protection program. I request that my entire statement be entered into the record of this hearing.

In 1986 the government of Puerto Rico enacted our comprehensive victim and witness protection law. This statute establishes that the public policy of our government is to offer protection and assistance to victims of crimes and witnesses in judicial proceedings and related investigations. The purpose of the policy is to secure their full cooperation and participation free from intimidation or harm.

The law requires the Secretary of the Department of Justice, also known as the Attorney General, to establish the program as a division of the Special Investigations Bureau. It grants broad powers to agents assigned to the program, including the power to arrest and the power to carry and wield firearms. Among the services included in the program are the maintenance of a twenty-four (24) hour emergency line for victims and witnesses, protection and transportation for victims and witnesses at their residences and places of employment, financial assistance, and relocation services within Puerto Rico or to another community. Our legislature appropriates sufficient funds each year to establish and maintain a staff of approximately sixty-five (65) persons employed to support this program.

Because Puerto Rico is a small island, we have unique circumstances that have caused us to develop a comprehensive strategy to deal with the problem of witness and victim intimidation. Our island is less than one hundred miles long and thirty-five miles wide. It is also densely populated. This small geographical area coupled with the dense population severely limits our ability to conceal the identity or location of an endangered victim or witness.

Another unique feature of Puerto Rico is that our system of justice is almost completely unified. We do not have county and municipal law enforcement agencies comparable to those here in the states. With the exception of enforcing municipal

ordinances and traffic laws, which is done by our municipal guards, all law enforcement personnel are state officials that ultimately report to a central police authority. All prosecuting attorneys, criminal investigators, and other police agencies are part of a unified system of justice which enforces Puerto Rico law. Due to these unique circumstances, we have developed a victim and witness protection program that is more comprehensive than other state and local programs in the United States.

Relocation of a victim or witness outside Puerto Rico is only one of a number of services provided by Puerto Rico to protect victims and witnesses subject to its jurisdiction. The following is a list of services provided by our program:

1. Protection to and from the Courthouse;
2. Safe house protection;
3. Temporary hotel accommodations;
4. Emergency victim and witness hotline;
5. Relocations within Puerto Rico;
6. Relocations outside of Puerto Rico;
7. Other services to facilitate the goals of the program.

As you can see, the witness protection program of the Puerto Rico Justice Department is a comprehensive program that provides many services. One of these services is the relocation of victims and witnesses to locations outside Puerto Rico. The majority of victims and witnesses that are relocated leave Puerto Rico only after their participation in judicial proceedings has ended. The decision whether to relocate witnesses outside Puerto Rico is based on the following factors:

- The danger to the witness if he or she remains in Puerto Rico;
- Whether the witness has relative or friends on the United States mainland.

Victims and witnesses have been relocated to several Florida cities since the inception of the program. During this time, forty (40) witnesses have been moved to the Orlando area. We have also relocated victims and witnesses to other states Connecticut, Illinois, Kansas, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Tennessee, Texas, and Wisconsin.

Of the more than two thousand victims and witnesses who have been assisted by our program since 1987, only 329 have been relocated *outside* Pueno Rico. Of those, 9S victims and witnesses have been relocated in the State of Florida. As I stated earlier, forty (40) of those have relocated in the Orlando area. Only five (5) of these forty victims and witnesses have prior criminal histories. To date, none of these victims and witnesses relocated in the Orlando area has been convicted of a criminal offense.

We believe that victims of crimes and witnesses who are relocated do not pose a security risk to their new community. In the great majority of cases, the relocated victims of crimes and witnesses have never participated in criminal activities. In all cases, these witnesses have agreed to cooperate with prosecutors to obtain major convictions before being relocated. This cooperation is completely voluntary and witnesses may leave the program at any time. Despite the risk, witnesses stay in the program to secure convictions. Their willingness to continue in the program demonstrates their desire to be law-abiding citizens and productive members of their new communities. Moreover, through interaction with these witnesses, our officers develop a personal familiarity with each person. We do not relocate any victim or witness we believe poses a threat to a community.

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In September 1996, 1 met with Lance H. Newman, Assistant Special Agent in Charge of the Florida Department of Law Enforcement in Orlando, and agent Bill Oliva of the same office and discussed formalizing our relocation procedures in the State of Florida.

Govemor Pedro Rossello of Puerto Rico received from Governor Lawton Chiles of Florida a letter and a proposed Memorandum of Understanding (MOW) between the State of Florida and the Government of Puerto Rico, following these discussions, on October 30, 1996 . While the specific details are being worked out, we are hopeful this document will be a useful device in clarifying the various responsibilities and obligations between Puerto Rico and Florida. We are developing a process that es-

tablishes one central point of contact in the state law enforcement agencies. This contact will be responsible for communicating and coordinating our efforts with all of the law enforcement authorities in Florida. By centralizing our efforts in this manner, we can ensure that relocation information remains efficiently managed and confidential. The Government of Puerto Rico is supportive of such initiatives. We are hopeful our MOU with Governor Chiles will serve as a model for other states to use with each other.

Finally, we must specifically and directly reject the allegation that the Government of Puerto Rico has been dumping criminals into the Orlando area. A vast majority of the relocated witnesses and victims have no past criminal history. They are seeking a new start in life away from the constant fear, intimidation and danger that has resulted from their cooperation with law enforcement authorities. As citizens of the United States, they have full constitutional rights to travel throughout the United States and to seek a safe haven from their past unfortunate circumstances. As citizens of the United States these victims and witnesses are entitled to the same life, liberty, and pursuit of happiness that all citizens enjoy.

In Puerto Rico, we have taken the lead in addressing the very difficult and real problem of protecting victims of crimes and witnesses to secure their participation in criminal prosecutions. Our state-wide program is a comprehensive approach to protecting law-abiding citizens who want to do the right thing by cooperating with the authorities, even when it means bringing great fear and disturbance into their own lives. We in Puerto Rico believe that if these citizens are willing to risk so much to bring criminals to justice, the law enforcement community should do whatever it can to ensure their safety.

I thank the committee members for the honor of testifying and welcome any questions or suggestions you may have.

Mr. McCollum. Thank you very much, Mr. Gierbolini.

Mr. Cummings, I think we should have your testimony next, if you would, please.

STATEMENT OF ROBERT E. CUMMINGS, ASSISTANT COMMISSIONER, FLORIDA DEPARTMENT OF LAW ENFORCEMENT

Mr. Cummings. Good afternoon, Mr. Chairman, members of the subcommittee. Thank you for allowing me to testify concerning the need for cooperation between jurisdictions involved in a variety of witness relocation programs.

I want to share with you what Florida is pursuing with the Commonwealth of Puerto Rico in response to a recent event, but more importantly I also want to talk about the need for a better cooperation between all States and jurisdictions.

First, let me state that witness relocation and protection programs are valuable tools. The successful prosecution of criminal groups and offenders sometimes requires the cooperation of witnesses who place their personal safety at risk. Because some criminals will not hesitate to intimidate, injure, or even kill witnesses in order to silence them, law enforcement must take reasonable steps to protect these witnesses, including sometimes relocation to another area.

However, when witness relocation occurs, it is not only important that the witness' safety be considered, but also the safety of the community at large. When a witness with a criminal past is relocated, there is a risk that that person will revert to crime.

Recent events in Florida have highlighted the need for better cooperation between States and territories to ensure that neither the safety of the witness nor the public is jeopardized. Last year, two undercover agents from Puerto Rico traveled to Osceola County, Florida, for the purpose of relocating a witness.

During the relocation process, a citizen became suspicious about the activity and notified the Florida Highway Patrol. A follow-up

investigation was initiated which resulted in a physical confrontation between law enforcement representatives from Puerto Rico and from the Florida Highway Patrol. The confrontation had the potential of reaching disastrous results considering the fact that the Highway Patrol officers were armed and responding to an event which called for very strict safety measures.

Following the confrontation, the law enforcement agents from Puerto Rico were detained for hours before their identities were verified. Upon learning of this incident and recognizing the lack of coordination between law enforcement agencies in Puerto Rico and Florida, FDLE sent representatives to meet with the Puerto Rican officials. We were able to gather information generally about the Puerto Rican witness protection program and verified that a significant number of witnesses have been relocated to Florida with little or no notice to Florida law enforcement agencies.

I am pleased to report that the Puerto Rican authorities are sympathetic to our concerns and seem receptive to better interagency cooperation in the future. Governor Chiles has corresponded with Governor Rossello of Puerto Rico seeking a formal agreement with the Puerto Rico Department of Justice to disclose to the Florida Department of Law Enforcement the identity and criminal histories of any protected witnesses relocated to Florida, past and future.

Specifically, FDLE would receive the fingerprints, photographs, other identifying data, and DNA samples if the individuals had a history of sexual offense. A confidential record would be maintained by the Florida Department of Law Enforcement. FDLE would also notify the police and sheriffs departments in the affected communities.

If the witnesses were to be rearrested for any crime after moving to our State, we would be alerted as soon as the arrest information was entered into the Statewide criminal history computer where it would have been flagged. FDLE would immediately notify officials in Puerto Rico, the witness would then face the loss of privileges under the witness protection program and possible return to Puerto Rico after the criminal charges were resolved.

In return, Florida agrees to reciprocate should our State adopt a witness protection program in the future. This strategy would create a considerable deterrent to criminal activity on the part of the protected witnesses. Under the agreement, both Florida and Puerto Rico would agree to take appropriate measures to preserve the security of the information about the protected witness.

Obviously, we recognize that the whereabouts of protected witnesses must not become known to those who would seek to harm the witness. While it appears that our problems with Puerto Rico will be resolved, we know that other States have witness relocation programs as well. We have concerns that proper communication between these agencies regarding the relocation of witnesses may not be occurring at the present time. Because of this, we suggest greater Federal, State and local coordination. This enhanced cooperation is necessary to ensure the public as well as the witness is safe.

We suggest that all States utilizing witness protection programs enact agreements similar to the one I have described. Governor Chiles has indicated to our department that he will contact the Na-

tional Governors' Association and discuss a possible agreement between and among the States.

We appreciate the subcommittee hearing on this critical matter and we are hopeful that the efforts you are making will result in better cooperation and communication between agencies involved in these type programs. The anticipated result is effective coordination across the Nation with better overall protection of the public and hopefully will avoid any confrontations between law enforcement agencies that could have tragic consequences. Thank you.

[The prepared statement of Mr. Cummings follows:]

PREPARED STATEMENT OF ROBERT E. CUMMINGS, ASSISTANT COMMISSIONER, FLORIDA DEPARTMENT OF LAW ENFORCEMENT

Mr. Chairman and Members of the Subcommittee, thank you for your consideration of my testimony concerning the relocation of protected witnesses. The successful investigation and prosecution of organized criminal groups and certain violent offenders often require the cooperation of witnesses who may provide valuable information to law enforcement officers and prosecutors pursuing these cases. In some instances, these citizen witnesses place their personal safety at risk by agreeing to testify. Experience has shown that some violent criminals will not hesitate to intimidate, injure, or even kill a witness in order to silence them. Clearly, law enforcement should take reasonable steps to protect these witnesses and assure that justice is not thwarted. In some instances, this may require the relocation of the witness to another area or state.

As we know, law enforcement's infiltration of organized criminal groups is sometimes difficult because of the secrecy of the group's members and the suspicion shown to persons not associated with the group. Because of this, it is sometimes necessary to rely upon the testimony of witnesses who are less culpable criminal associates of the primary criminal offenders. Without the cooperation of these associates, many important cases would be lost. When a former criminal associate becomes a witness, they often do so at the risk of their safety.

When a witness with a criminal past is relocated to a new community, there is always a risk that the person will revert to crime. The temptation to do so may be greater if the person is placed into a new community with the advantage of anonymity. This is compounded when the witness believes that any crimes they commit in the new community will not come to the attention of the criminal justice agency that relocated them. Recent events here in central Florida have served to highlight the need for cooperation between states and territories to insure that this does not happen. We acknowledge the need to protect witnesses who place themselves in jeopardy by cooperating with the police. We must not do so in a manner that threatens public safety. We must not allow yesterday's witness to victimize our citizens by committing crimes tomorrow.

Last June, two undercover agents from the Puerto Rico Department of Justice traveled to Osceola County, Florida for the purpose of relocating a witness. During the relocation process a citizen became suspicious about the activity and notified the Florida Highway Patrol. A follow up investigation was initiated which resulted in a physical confrontation between law enforcement representatives from Puerto Rico and from Florida. The confrontation had the potential of reaching disastrous results considering the fact that the FHP officers were armed and responding to an event which calls for very strict safety measures. This unfortunate event may well have been avoidable.

Upon learning of the incident, we quickly recognized the lack of coordination between law enforcement agencies in Puerto Rico and Florida. This had to change.

In order to lay the groundwork for mutual cooperation in the future, the Florida Department of Law Enforcement (FDLE) sent the Assistant Special Agent in Charge and a Special Agent from our Orlando office to San Juan to meet with our counterparts in the Puerto Rico Department of Justice. These meetings, which took place in September, proved both informative and productive. We were able to gather general information about the Puerto Rico Witness Protection Program. We also verified that a significant number of witnesses had been relocated to Florida with little or no notice to Florida law enforcement agencies. The Puerto Rican authorities that met with our agents were sympathetic to our concerns and receptive to establishing a plan for inter-agency cooperation in the future.

We were already familiar with the witness protection program operated by the US Marshals Service. While we have not done extensive research into this matter, some

preliminary work has indicated that a few other states have witness protection programs as well. We learned that some may also have relocated witnesses to Florida. Those we have spoken to in other jurisdictions were confident that local authorities would have been notified in the event a potentially dangerous person was relocated under their program. However, we believe that greater federal, state and local coordination would be beneficial to best assure public safety as well as witness safety.

FDLE has maintained frequent communications with Governor Chiles' office as this issue has developed. In consultation with the Governor, we agreed that it would be appropriate to seek a formal agreement with the Commonwealth of Puerto Rico on this matter. On October 28, Governor Chiles forwarded a proposed agreement to Governor Rossello.

The agreement calls for the Puerto Rico Department of Justice to disclose to FDLE the identity and criminal history of any protected witness to be relocated to Florida. Specifically, FDLE would receive the fingerprints, photographs, other identifying data, and DNA samples (if the individual has a history of sexual offenses). Puerto Rico would also provide the same information about protected witnesses that are already in Florida. A confidential record would be maintained by FDLE. FDLE would also notify the ranking official in the police department sheriff department in the affected communities. If the witness were to be arrested for any crime after moving to Florida, we would be alerted as soon as the arrest information was entered into the statewide criminal record computer. FDLE would immediately notify officials in Puerto Rico. The witness would then face the loss of privileges under the witness protection program and possible return to Puerto Rico, after the criminal charges were resolved.. In return, Florida would agree to reciprocate, should our state adopt a witness protection program in the future. This strategy would create a considerable deterrent to criminal activity on the part of the protected witness.

Under the agreement, both Florida and Puerto Rico would agree to take appropriate measures to preserve the security of the information about the protected witness. Obviously, we recognize that the whereabouts of the protected witness must not become known to those who would seek to harm the witness. Appropriate security of protected witness information will not create any new challenges. FDLE-and most other law enforcement agencies have been exchanging sensitive information for many years and already utilize appropriate safeguards to prevent its compromise.

In addition to working to obtain an agreement with Puerto Rico, Governor Chiles has recognized that we should seek to obtain similar agreements with other jurisdictions that have placed protected witnesses in Florida in the past or that may wish to do so in the future. To overcome the issue of"mobile" criminals (individuals that may be relocated to one Florida community, but travel to another to commit crimes) we have proposed that all previous notifications occur at the state level. I remain optimistic that by working together we will resolve this issue to the benefit of the citizens and visitors of Florida.

While it appears that our problems with Puerto Rico will be resolved, we know that *other states* have witness relocation programs as well. We have concerns that proper communication between agencies regarding the relocation of witnesses may not be occurring. Because of this, we suggest greater federal, state and local coordination. This enhanced cooperation is necessary to assure public as well as witness safety. We suggest that all states utilizing witness relocation programs enact agreements similar to the one I just described.

We appreciate the Subcommittee hearing on this critical matter and are hopeful that the efforts you as taking will result in better cooperation and communication between agencies involved in these type programs.

Thank you.

Mr. McCollum. Thank you very much, Mr. Cummings.

Mr. Callahan, we will turn to you. Welcome.

Mr. Callahan. And if I didn't, I ask that my prepared statement be made part of the record.

Mr. McCollum. Without objection, it will be made a part, as will be Mr. Cummings'.

STATEMENT OF RICHARD CALLAHAN, PROSECUTING ATTORNEY, COLE COUNTY, MISSOURI

Mr. Callahan. I will be brief in my offhand remarks. The one thing that strikes me is that the concept of relocation sounds a bit more organized than I think it is in most cases across this country

at the State level. I would suspect that Missouri is more the norm than Puerto Rico in that regard and our concept of, quote, relocating a witness permanently often involves nothing more than asking the witness if they have relatives or friends some place that they would like to stay with or——

Mr. McCollum. Mr. Callahan, I can hear you fine because I think this is made that way, but that mike needs to be there for everyone else in the room to hear you. Please go ahead.

Mr. Callahan. The concept of relocation, I think, in most instances is simply giving the witness a chance, if they would like to move, and the witness, as is human nature, is normally going to select an area where they have relatives, usually relatives and family, sometimes friends, and the relocation simply involves giving the witness sufficient money to hire a U-haul, perhaps in some instances giving them, if they are going to rent an apartment, 1 month's rent and that is pretty much it.

And the witness may decide to stay in the new location 2 weeks, 2 months. There is no control and really no further contact. If the witness does not like it, the witnesses frequently come back. We have had situations in Missouri where the witness wanted to stay in town, an apartment was located for the witness in a different area, the other side of town, but then the witness ended up after a few weeks, returning to the local McDonalds where she worked simply because she—and so, I guess my point is that the notion of witness relocation as it exists in the Federal Government and perhaps as it may exist in the Puerto Rican program, where there is some continuing control, they actually, if they are securing identities and homes and the like, I do not think that exists in most State programs.

And if you are going to address the concept of relocation, at least I would ask you to consider and recognize that a lot of the witness relocation that goes on is simply the witness moving in with friends and relatives for a period of time. No strings attached.

A lot of times the reason that there is no follow-up contact is that the danger does not persist as it may persist in prosecutions dealing with the Mafia, organized crime, or if you are facing the huge drug profits that you have here in southern Florida and Puerto Rico, where your gangs are going to be perhaps more organized beyond the likes of one or two leaders, there the danger may persist and you may need a more formalized program. But in the main across the country, I do not think—I think the Missouri experience, we do have some gangs from the West Coast that have now come into Kansas City and our experience is still that the danger to witnesses in your normal street crime is at the time of the investigation just when arrest is imminent and also as we approach the trial, usually the period of danger does not last any longer than 60 days between either one of those two times. And while the case is pending for long periods of time, the threat posed really drops.

The issue is new to me, the notion of automatic notification. My reaction is that I have some misgivings about it. Mandating notification in all cases, aside from the fact that the concept of relocation sounds more organized than we really are, in some cases it is going to be appropriate.

In some cases you may want to notify local law enforcement so they can aid in protecting the witness. But any time you notify someone else of a confidential fact, that is at least a threat to the security. And just to have an automatic notification to law enforcement in other States is mandating a potential breach of security that may be inappropriate.

And it is always, I guess, dangerous to legislate from the specific to the general. And I don't know that this concentration of one jurisdiction putting a lot of witnesses in one area, I don't know that it would exist any place else. Perhaps in Mexico—in Texas, they have this problem down in Mexico. Maybe Texas and Southern California might be experiencing something similar. But by and large in Missouri, the few witnesses that we do relocate, some are going to go to southern States where they have family and friends; some are going to go north to Chicago, and I do not think—I am not aware of any State where there has been—and I do not like the term "dumping," but at least a concentration of all your witnesses moving to one particular area. I think the circumstances here between Puerto Rico and Florida may be unique.

Lastly, the confrontation with officers down here, you always have a problem when your officers are outside their jurisdiction carrying weapons. And that may be more of a problem in this case than the fact that they were carrying boxes in or moving witnesses in.

[The prepared statement of Mr. Callahan follows:]

PREPARED STATEMENT OF RICHARD G. CALLAHAN, PROSECUTING ATTORNEY, COLE COUNTY, MO

The Missouri witness protection program was established by legislation in 1983. The program generally provides reimbursement to local government units that have expended moneys in protecting witnesses or their families. The program is intended to provide for the security of a potential witness, and their immediate families in all criminal justice investigations and proceedings.

The program addresses the witness security problems which are confronted in violent street crone prosecutions. Typically, the greatest threat posed to witnesses in these cases occurs either during the investigation phase immediately preceding the arrest and charging process or during the few days immediately preceding the trial or other significant testimonial proceedings. While the protection may continue for as long as the threat of danger exists, it is generally contemplated that any period for which protection is necessary will not normally exceed 60 to 90 days. Although the program can provide for the permanent relocation of a witness, this will not involve anything more than financially helping the witness with a move to a location chosen by the witness. The program does not attempt to provide the sophisticated name change and relocation services offered by the federal witness protection program.

The following types of expenses may be covered under the Missouri program:

1. Lodging—This includes housing or apartment rental, motel expenses, or fund to provide space in another jurisdiction's jail or correctional facility.

2. Food—The regulations provide that a modest, specific per diem rate should be established at the time protection is requested and adhered to throughout the period of protection.

3. Moving Expenses—A witness may relocate to another neighborhood, county, or state on a temporary or permanent basis.

4. Security Expenses—Reimbursement of overtime expenses for law enforcement to maintain surveillance of the witness's residence for a specified period of time.

The program does not pay for incidental expenses such as telephone calls, postage, cleaning, and cigarettes.

While the statute provides that the Department of Public Safety may receive applications for reimbursement from any law enforcement agency, the practice has been to require that all applications for witness protection be submitted through a county prosecuting attorney's office. The department established this requirement to

insure that a prosecutor is proceeding with an actual case and that the prosecutor also agrees that protection is required. Under the written guidelines, the applications must be forwarded to the Director of the Missouri Office of Prosecution Services (MOPS)[1] for review and recommendation prior to being submitted to the Department of Public Safety.

The applications contain a short narrative or description of the conditions which quality the person or persons for protection, as well as a description of the methods being used to provide protection such as relocation of the person. The applicant also provides an itemized statement of projected costs over a specified period of time. The Director of the Missouri Office of Prosecution Services reviews each application and certifies that the projected costs are necessary and reasonable. Once the application is approved by the department, the applicant is notified and the department monitors the costs. At times when the need for protection is eminent, approval may be given verbally either by the Director of the Missouri Office of Prosecution Services or the Missouri Department of Public Safety. However, under no circumstances will costs be reimbursed if prior approval is not received, either verbally or in writing, from either the Missouri Office of Prosecution Services or the Missouri Department of Public Safety. After the costs have been incurred by the applicant agency, that agency must submit a "statement" form to the Department of Public Safety accompanied by a brief transmittal letter on that agency's letterhead. Receipts and supporting documentation for the expenses must be included.

In any given year, there will always be more applications submitted and approved than there will be cases on which payment is actually made. This is because witnesses sometimes decide that they do not need the protection; over times they simply decide not to cooperate with authorities.[2]

Since 1992, local jurisdictions have been reimbursed in 37 cases. In 1995, reimbursement was provided in seven cases at the cost of $4,424.00. Those cases were two murders, one drug offense, one assault, and two sexual offenses. Of those seven cases, four involved expenses to protect witnesses prior to the giving of testimony, two involved permanent relocation, and one involved temporary relocation.

In fiscal year 1996, reimbursement of $21,335.00 was initially requested in 16 cases, although this number later dropped to ten cases which actually received reimbursement, for a total of $12,523.05. In 1996, reimbursement was provided in three cases, four assault cases, two drug offenses, and one child support case. During that fiscal year, temporary relocation was provided in three cases, permanent relocation was provided in three cases, and physical surveillance was provided in four cases. The surveillance generally involves the cost of an off-duty law enforcement officer to guard the victim.

Aside from the cases in which reimbursement is provided to local governmental entities, there are many other cases where some form of protection is provided and the local agency simply chooses to absorb the cost rather than seek reimbursement.

Attached is a copy of the Missouri statute establishing the witness protection program, a copy of the state regulations setting forth the procedures for qualifying for reimbursement, and a copy of the application form.

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[1] The Missouri Office of Prosecution Services is a special governmental entity responsible for the training of state prosecutors and is governed by a six-member council made up of five elected prosecuting attorneys and the Attorney General.

[2] Missouri is one of the few states which does not have a witness immunity law. Consequently, witnesses may avoid having to testify by the simple tactic of claiming the privilege against self-incrimination.

491.640. Department of public safety may provide for security of witnesses and families, when -- powers -- request by law enforcement agencies, content.

1. The director of the department of public safety may, upon the director's own initiative or at the request of the attorney general, any prosecuting attorney or law enforcement agency, provide for the security of witnesses, potential witnesses and their immediate families in criminal proceedings instituted or investigations pending against a person alleged to have engaged in a violation of state law. Providing for witnesses may include provision of housing facilities and for the health, safety and welfare of such witnesses and their immediate families, if testimony by such a witness might subject the witness or a member of his immediate family to danger of bodily injury, and may continue so long as such danger exists.

2. The director of the department of public safety may authorize the purchase, rental or modification of protected housing facilities for the purpose of this section. The director may contract with any department of federal or state government to obtain or to provide the facilities or services to carry out this section.

3. The director of the department of public safety may authorize expenditures to provide for the health, safety and welfare of witnesses and victims, and the families of such witnesses and victims, whenever, in his judgment, testimony from, or a willingness to testify by, such a witness or victim would place the life of such person, or a member of his family or household, in jeopardy. Applications by requesting law enforcement agencies under this section must include but not necessarily be limited to:

(1) Statement of conditions which qualify persons for protection;

(2) Precise methods the originating agency will use to provide protection, including relocation of persons and reciprocal agreements with other law enforcement agencies;

(3) Statement of projected costs over a specified period of time.

4. Under no circumstance shall the expenditures from general revenue for the purposes provided for in this section exceed the amount of ninety-five thousand dollars, if and when appropriated by the general assembly for such purposes.

(L. 1983 S.B. 24 § 5)

CHILD VICTIM WITNESS PROTECTION LAW

Witness Protection Program

BACKGROUND

Senate Bill 24, enacted in 1983, established the Witness Protection Program in Missouri (491.640, RSMo). Among its provisions, it allows the Director of the Department of Public Safety, upon the request of the Attorney General, any prosecuting attorney, or law enforcement agency, to provide for the security of a witness, potential witness, and his/her immediate family in criminal justice proceedings instituted or investigations pending against a person alleged to have engaged in a violation of state law. Such protection may be provided if a clear and present danger exists that the testimony by such a witness might subject the witness or a member of his/her immediate family to the threat of bodily injury. The protection may continue for as long as the threat of danger exists.

The Witness Protection Program is funded through state general revenue, and the amount of monies available is dependent upon annual appropriations. This program was first funded in FY'85.

CONCEPT OF PROGRAM

According to Chapter 491, section 640, RSMo, witness protection may include provisions for the health, safety and welfare of a witness and his/her immediate family, if testimony by such a witness might subject the witness or a member of his immediate family to danger. Because funds are limited, it is not possible for the Missouri program to duplicate those comprehensive, long-term services provided through the Federal Witness Protection Program. Toward this end, it is hoped that expenses will be reasonable and consistent with the degree of security required, and that the period for which protection is necessary will not exceed 60-90 days.

ALLOWABLE COSTS

It is not the intent of this program to cover such incidental expenses as telephone calls, postage, cleaning, cigarettes, etc. The following types of expenses may be covered under the Missouri program:

- Lodging - This includes housing or apartment rental, motel expenses, or funds to provide space in another jurisdiction's jail or correctional facility.

- Food - A modest, specific per diem rate should be established at the time protection is requested and adhered to throughout the period of protection.

- Moving Expenses - A witness may relocate to another county or to an adjoining state. When possible, the witness should utilize a rental truck or other "move in yourself" means.

- Overtime Expenses - Reimbursement of overtime expenses for law enforcement to maintain surveillance of the witness's residence for a specified period of time is allowable.

APPLICATION PROCEDURES

As required by statute, applications must include, but not be limited to, the following.

1. Statement of conditions which qualify person(s) for protection,

2. Precise methods to be used to provide protection, including relocation of person(s),

3 Precise methods to be used to work with other law enforcement agencies that may be involved with the witness in this case or another pending case.

4 Itemized statement of projected costs over a specified period of time

All applications submitted will be kept confidential by the Department of Public Safety.

All applications for witness protection must be submitted by or through a county prosecuting attorney's office or the office of the circuit attorney. The exception to this procedure would be cases where evidence can be shown that there is a problem with a particular county prosecuting attorney or circuit attorney which would preclude involvement of that particular office.

In addition, all applications must be forwarded to the Missouri Office of Prosecution Services for review and recommendation prior to being submitted to the Department of Public Safety. The initial request for assistance may be verbal in emergency cases. However, a formal written application must be completed and forwarded, as soon as possible, to:

Missouri Office of Prosecution Services
Attorney General's Office
Supreme Court Building
P.O. Box 899
Jefferson City, MO 65102
(573) 751-8763 or 751-2415

Under no circumstances will costs be reimbursed if prior approval is not received, either verbally or in writing, from the Missouri Office of Prosecution Services or the Missouri Department of Public Safety.

Upon final approval by the Department of Public Safety, a copy of the application for assistance will be returned to the applicant agency.

After costs have been incurred or expenditures made, the applicant agency must submit a "Statement" form to the Department of Public Safety accompanied by a brief transmittal letter on the applicant agency's letterhead and receipts and supporting documentation for the expenses. It is preferred that the program be conducted on a reimbursement basis. However, other arrangements can be made if necessary.

PROGRAM ADMINISTRATION

In order to insure the best possible utilization of these limited witness protection funds, the Department of Public Safety has established a screening system to ascertain the validity of the request and the severity of the situation. In addition to the formal request made through the prosecuting or circuit attorney's office and then through the Missouri Office of Prosecution Services, the Department of Public Safety may contact the appropriate law enforcement agency to obtain their input on the particular case. If deemed necessary, a member of the Missouri State Highway Patrol Drug and Crime Control Unit may be assigned by the Department of Public Safety to investigate the request.

Any questions concerning the Witness Protection Program may be directed to:

Witness Protection Program
Missouri Department of Public Safety
ATTN: Vicky Scott
Truman State Office Building
P.O. Box 749
Jefferson City, MO 65102
(573) 751-4905

INSTRUCTIONS

Complete Applicant Information Section. Type or print. All applications for witness protection must be submitted by or through a county prosecuting attorney's office or the office of the circuit attorney. The exception to this procedure would be cases where evidence can be shown that there is a problem with a particular county prosecuting attorney or circuit attorney which would preclude involvement of that particular office

Type of Protection Requested: Use the space provided or attach a separate sheet stating. 1) the conditions which qualify the person(s) for protection, and 2) the precise methods the originating agency will use to provide protection including relocation of person(s) and reciprocal claims with other law enforcement agencies. Also include the case number for the proceedings in which the witness will be involved.

Period of Time Protection Required: Give an estimate of the length of time protection will be required

Estimated Cost of Providing Protection: Indicate the anticipated cost of providing the protection services requested Attach a complete, itemized breakdown of the costs involved. Receipts for all costs will be required to receive state reimbursement.

Application Process: All applications must be forwarded to the Missouri Office of Prosecution Services for review and recommendation prior to being submitted to the Department of Public Safety. The Missouri Office of Prosecution Services will forward the application to the Department of Public Safety for further action

If the application is approved, the Department of Public Safety is obligated only to the amount stated on the application If it becomes apparent that additional funds will be required, the applicant must notify the Department of Public Safety to request additional funds. The Department of Public Safety will consider all requests for additional funds, but the ability to obligate additional funds is limited to the availability of said funds as appropriated by the General Assembly for such purposes. If it becomes apparent that the funds allocated by the Department of Public Safety are greater than the actual costs of providing protection, the applicant should notify the Department of Public Safety so that any unused funds can be released for use by other jurisdictions.

Please submit the application to

Missouri Office of Prosecution Services
Office of the Attorney General
P.O. Box 899
Jefferson City, MO 65102
Telephone (573) 751-8763 or (573) 751-2415

NOV 26 '96 11:25 COLE COUNTY PROSECUTING ATTORNEY

APPLICATION FOR WITNESS PROTECTION ASSISTANCE

(See directions on opposite side.)

Applicant NAME _____ TITLE _____

MAILING ADDRESS _____ PHONE NO. _____

_____ FAX NO. _____

Type of Protection Requested: (Describe services required and circumstances prompting the request)

Period of Time Protection Required: _____

Estimated Cost of Providing Protection: $_____

(attach an itemized breakdown of all costs)

The applicant certifies, by signature herein, that the above request is serious and just, and that the expense is necessary to the public business of the state of Missouri.

_____

Signature of Applicant Official Date

Protection Recommended: _____ YES _____ NO

(Comments)

_____

Signature - Missouri Office of Prosecution Services Date

Application Investigated By

Persons Contacted (1) _____ (2) _____

Assistance Approved _____ Type of Protection to be Provided _____

_____

Assistance Denied _____ Reason for Denial _____

_____

_____

Director or Assistant Director, Department of Public Safety Date

Mr. McCollum. Thank you very much, Mr. Callahan.

I don't know that we have a clock here today, but we normally operate under a 5-minute rule for ourselves, and I will try to have the time kept by my able counsel over here. We will probably have two rounds of questions as we only have two panels of witnesses. I will recognize myself for 5 minutes.

First of all, Mr. Gierbolini, I want to make sure the record is clear that I personally do not think from hearing what has been said here today that the term "dumping" is appropriate. It is not an appropriate reflection of the Puerto Rican witness protection program or what has happened here in our area.

You explained how the number of witnesses since 1987 has been 329. It sounds like they have been spread over a considerable portion of territory other than Orlando, and of the 40 who have been placed in this area, only five have had criminal histories; is that correct?

Mr. Gierbolini. That is correct.

Mr. McCollum. I do have sensitivity with those who do have criminal histories and I am curious as to the other 289. You said five of the 40 who have come to Orlando had criminal histories. Do you know how many of the 289 others have had criminal histories?

Mr. Gierbolini. I think the ratio is similar. I have not finished getting all the information from the various databases, but as much as I have, the ratio remains similar, which is six out of 40. I would be happy to get that information and get it for the committee and report back to you.

Mr. McCollum. If you could for the record it would be helpful for us to know. Another factor that may explain that low ratio is that sometimes you have people who not have criminal histories because they have been granted immunity in return for their cooperation.

In your judgment, does that reduce the number from eight out of the 40 who were placed here to five who had criminal histories? Were there another five or 10 who would have had criminal histories had they not been granted immunity?

Mr. Gierbolini. I have two views of that. I thought about that. In some cases people with immunity are charged and given, you know, suspended sentences. What I could do is, once again, I could check each one of the number of witnesses and see if they were not charged for their cooperation and then see if the numbers change. I don't think so, but I will be glad to do that.

Mr. McCollum. If you could do that for the record, it would also be helpful. You mentioned the year 1987. Is that when the witness protection program began?

Mr. Gierbolini. The law was enacted in 1986. Actual operations, in my information, it started in the beginning of 1987.

Mr. McCollum. All right. Not so much nationally we are more concerned locally about the memorandum of understanding between the State of Florida and Puerto Rico. What is there, Mr. Cummings, that remains to be resolved? Is the process hung up or is it just a matter of time before the Governors sign this memorandum?

Mr. Cummings. Governor Chiles signed the letter and approved the MOU from Florida's perspective, I believe it was the 23th of

October, and it was transmitted to Governor Rossello and we are waiting for a response from Puerto Rico.

Mr. McCOLLUM. Mr. Gierbolini, do you see a problem with this memorandum? Is there an internal debate that would cause Governor Rossello not to sign it in its present form?

Mr. GIERBOLINI. No, we are looking at it. As I said in my statement, we are happy. This is the first step. I think we have to be careful and be clear that we get the right issues in the memorandum of understanding. But we will follow up with this as soon as I return back to Puerto Rico tomorrow.

Mr. McCOLLUM. Mr. Callahan, you said in your testimony that you really didn't think there was a need to notify, and, in fact, there would probably be problems with notification if you placed witnesses in other States in some instances. I can understand that perspective, but do you not think that when somebody has a criminal history—particularly of a violent crime or drug trafficking—that there needs to be notification for public safety at least to the State if not to the local law enforcement community when such a person is placed in that community?

Mr. CALLAHAN. I guess it turns in part on what your definition of a history is. If you are talking about history of an arrest where a person has never been convicted, if you are talking about whether someone is on parole, if somebody is on parole, yes.

Mr. McCOLLUM. Suppose they are not on parole, but have a history of a number of crimes—they are major bad actors. I know that it depends on how bad they are, and I don't know how bad the five people are that Mr. Gierbolini said had criminal histories. We will go into that later. But I am concerned with the national picture—we are not just looking at what happened in Florida—but let's say it is in Missouri or in Mr. Buyer's State of Indiana, if you put somebody in there that is a major captain of a drug organization and maybe he has been charged several times and has been in and out of jail several times. Somewhere along the way it seems to me that somebody ought to be notified.

Mr. CALLAHAN. I view it from the perspective that there is the constitutional right to freedom of movement already. And to the extent that these individuals are already free to move into any community they choose—and I guess it comes back down to is the witness actually being picked up and dropped into a foreign community or is it a situation where you give the witness, here is a plane ticket, you have some relatives you can stay with, and the witness goes to stay with those relatives. In the latter situation, a lot of times the witnesses would probably be going to visit those relatives anyway.

Mr. McCOLLUM. I see your point, but we are splitting some hairs in this all the way along. I guess I have time for one more question.

Mr. Gierbolini, in terms of those who have criminal histories, the five who came here, first could you tell us what kind of criminal history did they have; and secondly, were those people followed or tracked by the Puerto Rican authorities when they were here in Orlando?

Mr. GIERBOLINI. So the first part of the question?

Mr. McCollum. The first part was what type of crimes had these five people committed who were the five of the 40 who were placed in Orlando under the protection program.

Mr. Gierbolini. Speaking from memory, I think one was charged with theft. Another one has a burglary. Another one has various charges of theft, which has another name in Spanish. I have the records and I could supply those——

Mr. McCollum. There is nobody who is a murderer; nobody convicted of a sexual assault?

Mr. Gierbolini. There is nobody in the program that I know of and I have looked that is a sexual offender. One of the five might have a manslaughter and I could check for you what kind of a record and what involvement did he have.

Mr. McCollum. The other part of the question was did you as a government in Puerto Rico keep regular tabs—keep track of these people, any of the 40 or these five in particular, or did you just send them over here, get them a house, say we need you, but here is some money and that is it?

Mr. Gierbolini. Mostly, that is mostly what we do. Once we relocate them. We are certain that this witness and victims are ready to start a new life. In many locations we support them for several months. They call us when they have problems. And if they have problems that are serious that they need to be relocated for whatever reason, we come back and move them again. But that is the extent of the involvement once we relocate them.

Mr. Chairman, I just want to emphasize, these are people that have worked with us in many cases 2 or 3 years. When we do the relocation, we know a lot about this person and they have committed themselves to doing—to helping us convict criminals. So we know a lot about these people and we are certain that they pose no security threat to the community.

Mr. McCollum. Well, my time is up. I am going to yield to Mr. Scott. But just to make one editorial comment, from what you have described you are not putting dangerous people over here. Even those convicted of crimes in the past, they do not have very serious violent crimes and it does not sound like you have made any major mistakes in that regard. But we certainly wanted you to have a chance to put that in the record as you have done today.

Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman.

I want to follow up on that line of questioning, because part of I think from what I have seen in the newspaper clippings, there seems to be a difference in the perception and the reality.

Let me read to you the October 11, 1996, passage from the Sentinel, the Orlando newspaper: About half the witnesses moving to Florida are low- to mid-level drug dealers who typically have no job skills and do not speak English. An unknown number are suspected killers. The rest are a mixture of suspects' friends and innocent bystanders who would be too afraid to testify without the promise of new identities.

Do you think you have fully responded to that? Do you want to add anything to what you have already said?

Mr. Gierbolini. What I want to add to that statement is that the information I have now is better information than what I had

when I said what is being referred there. I am not agreeing that that is—word by word that is what I meant. So we have looked case by case for the 10 years' record and have come up with what I said in my prior statement. So of the 40 in Orlando, which we keep mentioning, only 5 have past criminal histories and the tendency for others in other States is about the same.

And I have done this one by one, and looking at their actual case and looking at the criminal information system in Puerto Rico and the NCIC, the National Crime Information Center, which is national. Each one of the people that has been relocated outside of Puerto Rico. So what I am saying is that the information I am giving you now is better information because I have it now that I have looked for it.

Mr. SCOTT. If a person were to commit a crime after they have been put into the program and moved outside of Puerto Rico, do any of the jurisdictions give them immunity from prosecution for any crime they may commit once in the program?

Mr. GIERBOLINI. If they commit a crime once they are relocated, they are subject to the law of the local jurisdiction. We do not give them immunity for that—or we cannot.

Mr. SCOTT. I understand on the chart, you are not aware of anyone in Orlando who is a part of the program who has committed a crime once they are in the program, any crime at all?

Mr. GIERBOLINI. That has been convicted of any crime, yes.

Mr. SCOTT. That is true?

Mr. GIERBOLINI. The 40 of them, I have looked time and time again, and the people at our Interpol office have helped me with this, and none of the 40 has been convicted of any crime.

Mr. SCOTT. Now, what do they do for income? You give them $1,400 a month?

Mr. GIERBOLINI. I don't know where that figure came out. That is probably an average. That depends on where the person is relocated and how big the family, if he has a family.

Mr. SCOTT. Do many of them get jobs?

Mr. GIERBOLINI. Some of them do. In doing this research, I know of one that after finishing in Puerto Rico, moved to Florida, and as I understand, he started a small business, grocery store and he is now able to bring his family here and is successful.

Mr. SCOTT. Now these people in the protection program, do they change their identity?

Mr. GIERBOLINI. Not usually. The statute, the Puerto Rican statute provides that we can do it, but I am not aware of any case where they have changed their identity.

Mr. SCOTT. So most of them move just to get some distance between themselves and the people who would cause a danger and not to secrete themselves. The Federal program, you have people getting a brand-new identity, but that is not the case in the Puerto Rican program?

Mr. GIERBOLINI. No, sometimes a lot of the danger for a person that has testified comes from Puerto Rico being so small. And just putting, as you said, Mr. Congressman, a lot of distance between Puerto Rico and the person that may do some harm to that witness or victim works.

Mr. SCOTT. Thank you.

Mr. McCollum. Thank you very much, Mr. Scott. Mr. Buyer, you are recognized.

Mr. Buyer. One question I was thinking of off Mr. Scott's questioning. Are the people in Puerto Rico required to have Social Security numbers?

Mr. Gierbolini. Yes, they do.

Mr. Buyer. So these 329, there are not reapplications for Social Security numbers or change of identities?

Mr. Gierbolini. We haven't done any of that. We have found that moving them far from Puerto Rico helps and it has not been necessary thus far.

Mr. Buyer. I am going to get back to the numbers for a second because I am curious. Of the 329, have any of them been charged with any form of criminal activity since they have been in the States?

Mr. Gierbolini. I have not finished gathering all the information. I will, because I committed myself to Mr. Chairman, and I will find out soon about that.

Mr. Buyer. These are 329, you used the words "witnesses and victims." I know this all gets into the fuzzy area because you have got—let's just call it you have the innocent victims, you have got individuals of whom operate in the environment or part of the constitution of criminal activity who may not just have been caught but they know all the players in the conspiracies. You have got the Mafia to organized crime to drug cartel to low-level crime. You said you have got relationships with these for a long time. Sitting here as a former prosecutor, that is what is going through my mind, that you are dealing with people who are providing tremendous information to you with organized crimes. Is that what we are talking about here?

Mr. Gierbolini. Yes, they do. As you know, people that are on top of criminal organizations are very hard to get at and it is helpful sometimes to get people that, as you say, work in the same environment. Although I am not talking about any specific case, I am talking about generally that this kind of information, this type of person that may have been related to somebody like that is very helpful.

Mr. Buyer. So I made that comment only when the Chairman was asking you for specific questions trying to get backgrounds on these. I think it is going to be very difficult for you. I look at—probably an overwhelming number of these are involved in some form of criminal activity or another by being inside of criminal enterprises.

Mr. Gierbolini. The numbers that I am giving you are what I have found.

Mr. Buyer. My reaction so far is that sometimes our systems are not as sophisticated as what we take them for granted to be. And I just would have assumed that some of these witness programs—I know that the gentleman from Missouri is uncomfortable, and I can understand why, about the mandating of notifications and the breach of securities and confidentialities. You do not have a great degree of relationship between Puerto Rico and Indiana, but your relationship between here and Florida I can understand. And I have to say I am quite surprised that there had not been memoran-

dums of understandings or communications between the Governor or the administration here in the State of Florida and Puerto Rico. I am really quite surprised about that. I am pleased that you are moving in that direction. I am also pleased that it can be a model for other jurisdictions.

I understand the one gentleman also made the comment about the constitutionality with regard to freedom of movement in our society. You are correct, but when they are also still within the arm of the justice system, now we are in the gray area.

One of you had mentioned interrelated agencies' cooperation. How do we do this and have the cooperation between the Federal and the States by really keeping Congress' hand out of this? How do we get the States out there cooperating?

I know you mentioned about Governor Chiles bringing this up. I would like to see the States have the intercooperation without the Federal Government coming in. Otherwise, you are going to end up with some mandates that you are not going to be too happy about.

Mr. CUMMINGS. Our issue here is that we are on the front end of this process and trying to really assess our own situation here between the State of Florida and Puerto Rico. We have contacted other States in an attempt to gather information on how and what their processes are and what the protocol is. Our view is that it could be worked out between the States if we developed a model protocol.

We have agreements between States now that work quite well, memorandums of understanding that we assist each other. We have informal and formal working relationships.

Mr. BUYER. What other States are there?

Mr. CUMMINGS. In the Southern Governors Association, for example, there is a mutual aid compact that we would provide assistance in emergencies.

Mr. BUYER. So Florida and Georgia here with Mr. Barr?

Mr. CUMMINGS. That is correct. And in the case of a natural disaster or what have you, States could assist each other in providing law enforcement equipment and resources at the request of the other States.

So this kind of memorandum or protocol as a model, it would not be that foreign between the States. It may not be a binding declaration, but it certainly could be something that could offer a protocol to follow. And our indication in just some preliminary conversation with the Governor is that he would be willing to move forward at that level and explore that between the Governors.

Mr. BUYER. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Barr, you are recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

I am really kind of astounded at the extent of Puerto Rico's program here, and its size and scope really literally rivals that of the entire Federal Government program. I suppose there is nothing inherently wrong with the program, but I think this morning is a good start to seeing if there are interstate problems here that deserve the attention of the Congress. I think it is a legitimate area for us to be looked into.

I am not sure it is as simple as looking at possibly mandated notification. That is one way of looking at it. Another way of looking

at it is to provide some protection for the public safety responsibilities of a receiving State.

Let me nail down just a couple of things, Mr. Gierbolini. We talked a little bit about identities. Are there any instances whatsoever in which Puerto Rico in placing people into the witness protection program and then relocating them outside of Puerto Rico have been given aliases or any new identifying—either names or identifying numbers such as Social Security numbers or driver's license numbers?

Mr. GIERBOLINI. As I said, I do not recall one case where we have relocated somebody and changed their name or their Social Security number. The statute provides for the witness to have us change their identity, but I do not know of any case where we have done that.

Mr. BARR. I am still confused. Is there an instance or not?

Mr. GIERBOLINI. There is not any that I know of, and I have looked.

Mr. BARR. Would you know?

Mr. GIERBOLINI. Unless it happened a long time before I came, but this is an issue that because there is a line in the statute that says that the witness—and I am paraphrasing—may request a new identity——

Mr. BARR. I am curious under what authority could the Government of Puerto Rico provide a new identity such as a Federal Social Security number?

Mr. GIERBOLINI. I am talking about a name change. That is what I was talking about, changing it in the local registry in Puerto Rico, which is what the law mentions.

Mr. BARR. That would be—if there is such a person that was given an alias or a new name, and then they were relocated into another State, would that be a violation of that State law? Would that person already be in violation by, say, applying for a driver's license or something else under the law of that State using an alias? Would that be a violation of that State's law?

Mr. GIERBOLINI. I do not know the answer to that. But, again, I do not know of one instance where we changed the name and moved the person.

Mr. BARR. I am sorry; I thought you said you knew of only one. Do you see some potential problems with that?

Mr. GIERBOLINI. There are many legal issues here, but I do not know the extent. And I would rather have counsel look into that or have people advise me on that here.

Mr. BARR. I think it carries with it some significant potential legal problems.

Turning to your chart, Mr. Gierbolini, I notice the last column on the right, participants convicted of criminal offenses. Have any of those participants been arrested for criminal offenses?

Mr. GIERBOLINI. I could get that information. I think the answer to that is yes, there might be one. But I have to gather it.

I was working with trying to get criminal convictions, because that is what I thought the subcommittee meant when I got the request for information. They said "criminal history" and I was trying to go with criminal convictions. But I can get that information really easily and do it immediately.

Mr. BARR. Could you provide that not only for those relocated to the Orlando area, but also the 329 located outside of Puerto Rico? In other words, have any of those 329 been arrested for criminal offenses after they have been relocated outside of Puerto Rico?

Mr. GIERBOLINI. Certainly.

Mr. BARR. Is the main problem in setting up some sort of memorandum of understanding, either a voluntary one, or if there were to be legislation in this area, is the primary problem that must be addressed one of securing the information?

Mr. GIERBOLINI. I think that is the main issue. Confidentiality and making certain that we develop a way of ensuring that this person—that the information that we are giving remains confidential. I think that is one of the main issues.

Mr. BARR. Okay. And just looking at—and I know you said the Governor has not made a final assessment on the memorandum of understanding that the Governor sent him from Florida, but preliminarily does it look as if that memorandum of understanding does properly address the issue of securing the information so that that would not be a problem?

Mr. GIERBOLINI. I think we have a very good working document to start with. And I am not guaranteeing anything, but I think we are going to work very hard to get that document signed as soon as possible. It is to our benefit, and that is our intention.

Mr. BARR. Okay.

Just speculating, and this may not ever even happen, and if it did, it would be down the road, if there were to be Federal legislation considered that would have at its core, for example, that whenever an individual from the Commonwealth or from one State under a witness protection program, is relocated into another State or into the Commonwealth, that the law enforcement agencies notify the State in which that person is to be relocated? Would you see any inherent problem with such a national approach, as long as there is a mechanism that properly protected the information?

Mr. GIERBOLINI. As little as I know, I think the main issue is that. You have to secure that. Once you have a major program that required the sharing of that information, you have to be certain that that information is not leaked, because that is important. The relocation of the witness must remain confidential.

Mr. BARR. Finally, along those lines, you mentioned in your prepared remarks that while our statute does not require that we contact local law enforcement authorities in areas where witnesses are to be located, we usually contact local officials informally. How secure is that system?

Mr. GIERBOLINI. We feel that these are agents that we have worked with on many occasions and that we can trust to be confidential. I see what you are raising, but I think that our agents develop a sense of trust between agents that they use or that help them when they come to Florida.

Mr. MCCOLLUM. Thank you, Mr. Barr. We will come back.

Mr. Gierbolini, I want to clarify a couple of things. I do not want to leave any chance of misunderstanding here today. Mr. Scott asked you about an Orlando Sentinel article that appeared back in October, and the quotes in that article said that about half the wit-

nesses moving to Florida are low- to mid-level drug dealers. Is that statement true or false?

Mr. GIERBOLINI. Well, I have looked at records. I was speaking from the information that agents that work in the program sometimes give you. So what I am trying to say is that this information that is in my statement today and that I am giving you today is information I gathered after studying this issue file by file through the years.

Mr. MCCOLLUM. So this statement is not true?

Mr. GIERBOLINI. I think the statement is inaccurate from what I have found. I have looked really hard to see that I am wrong.

Mr. MCCOLLUM. In other words, originally you made the statement to the reporter and that is where they got the idea, but you have looked into it since then and that is just not true; is that correct?

Mr. GIERBOLINI. Yes.

Mr. MCCOLLUM. And also the reporter is saying, typically they have no job skills and do not speak English. Of course, that could be a lot of people, but do you know where they got that from?

Mr. GIERBOLINI. I got that from speaking to agents. I think some of them are precisely that, people that do not speak English.

Mr. MCCOLLUM. But that would not be uncommon, whether somebody was in the program or not, if they came here from Puerto Rico or they came here from any of the Latin American countries where speaking Spanish is common. There is nothing peculiar about that I guess, is there? Nothing unusual?

Mr. GIERBOLINI. I do not think so.

Mr. MCCOLLUM. And last but not least, the reporter said that an unknown number are suspected killers. You told us today that you thought only one had a manslaughter conviction and that is it; right?

Mr. GIERBOLINI. Right, and I do not even know if he was a killer.

Mr. MCCOLLUM. It could have been somebody in a hit-and-run accident in a car?

Mr. GIERBOLINI. It could be that, right.

Mr. MCCOLLUM. I just want to clarify the record. The situation is not nearly as bad as that statement seemed to imply when it first appeared. That is the impression that was given then, but the impression that you are giving today is that it is not as bad as that.

Mr. GIERBOLINI. That is why I appreciate the opportunity to be here today, because they gave me the responsibility of looking for the actual figures for the whole 10 years and finding out who exactly are we talking about. And I think what I am giving you is what I know today.

Mr. MCCOLLUM. Does the constitution of Puerto Rico or your statute actually give witness protection as a right? I know you have a statute on witness protection, but does somebody who is a witness in a hearing or in a criminal case in Puerto Rico have some right under the constitution or under the statute?

Mr. GIERBOLINI. It is a very broad statute with regard to rights for witnesses and victims. So I would say the answer to that is yes, it gives them broad rights.

Mr. McCollum. So the witness has a right to witness protection? It is not something that you are deciding on your own?

Mr. Gierbolini. I think the witness has a right to get into the program, and we are just carrying it out, as you said.

Mr. McCollum. And what Mr. Barr said to you about your statement that you usually contact local officials informally, does that mean that of the 40 that have been placed in central Florida, there has been some contact in most cases with local officials, or not?

Mr. Gierbolini. I do not know the exact percentages but a good number of cases, I know—and the cases I mentioned there has been some prior contact, and contact while the relocation is taking place.

Mr. McCollum. I think that is why we need the agreement and we are glad that it is occurring right now.

With regard to these agreements, Mr. Cummings, I am particularly struck by the fact that our research shows there are six States, Colorado, Maryland, New Jersey, Rhode Island, Missouri and Virginia, that have witness protection programs. Have you been in contact with those States, per chance?

Mr. Cummings. We have been in touch with a number of those States, yes.

Mr. McCollum. Do you know if any of them have placed witnesses in the State of Florida?

Mr. Cummings. Most that we have contacted indicated that they had not placed witnesses in our State. There was one State we contacted that indicated periodically a witness would be moved to the State of Florida, and their policy, when we pressed them on their policy, was that they would notify the local law enforcement representative.

I am aware throughout my experience in investigations that periodically we would have been contacted by other States and witnesses relocated to our State, and we worked with those States. But as it relates to this last several weeks' inquiry by our department into those States, it is a rare case.

Mr. McCollum. Mr. Cummings, are you aware today of any witness under a witness protection program, State or Federal, who has been placed in Florida and is a suspected killer?

Mr. Cummings. No, sir.

Mr. McCollum. Thank you.

Mr. Callahan, you have heard this discussion today. Are you aware of any witness in the Missouri program or a witness from any other State who has been placed in an adjoining State or any of the 50 States and is a suspected killer?

Mr. Callahan. No, I am not. I have not done the research that my counterpart from Puerto Rico has.

Mr. McCollum. I understand that. I am just asking if you were aware of anybody.

I think my time is up on this second round. Before I go any further I want to thank the witnesses. I also want to make sure that we have another round so that Mr. Scott, Mr. Buyer, and Mr. Barr get another chance to question the witnesses.

Mr. Scott. Thank you, Mr. Chairman.

I would like to ask any of the witnesses if in these relocation programs, including the ones in Florida, do you actually provide protection after you have relocated the people?

Mr. CUMMINGS. We do not have a formal witness protection program in the State of Florida. And as our department periodically has relocated witnesses within our State, case by case would dictate whether or not they receive protection or not.

Mr. SCOTT. If you have relocated them, is that like we said before, just to put some distance between the people and not to secrete them?

Mr. CUMMINGS. It would cover both sides. We have relocated people to put distance between them and the people that they testified against. We have also relocated people because we felt there was an imminent threat and we provided protection.

Mr. SCOTT. If you want to secrete them, those are the ones you provide protection to?

Mr. CUMMINGS. Yes, sir.

Mr. SCOTT. I do not know if you want to go into detail about what kind of protection it is for security purposes, but would it be 24 hours, 7 days a week type protection, or do you want to talk about that?

Mr. CUMMINGS. Not in detail. I would only say that it would vary depending on the type of witness and what the level of threat is. We would do an independent threat assessment.

Mr. SCOTT. How often are these people actually in danger? I mean, prior to trial I could imagine that there is some exposure to danger. After the conviction, which would be retaliation as opposed to trying to avoid the conviction, how often are witnesses in actual danger?

Mr. CUMMINGS. Again, that would depend on the type of group that you are dealing with. There are groups that I have seen in past years that would go after a witness years later, so they would be under a continued threat. Those are rare. In most cases, it would be prior to trial. That is where the greatest threat——

Mr. SCOTT. Are you talking about organized crime?

Mr. CUMMINGS. Organized crime, major drug cartel type witnesses.

Mr. SCOTT. Mr. Callahan.

Mr. CALLAHAN. If I could just add to that, in Missouri, certainly, and I think in most States, if we had that type of threat, we would go to the Federal Government and seek permission to have our witness enrolled in a Federal witness program. And I have had, over the years as a State prosecutor, I had one case where I had a witness in the Federal Witness Protection Program. I think most States probably after the trial, the threat is going to be over. It is only those organizations that go on, despite no matter who is in the lead, it is an ongoing enterprise and you are going to have a longstanding threat of retaliation.

Mr. SCOTT. How do those witnesses ever get a job?

Mr. CALLAHAN. I would go to the Federal Witness Protection Program for those few cases.

Mr. SCOTT. Well, Mr. Callahan, do you have people who have changed identities or that you are trying to secrete? Apparently in Missouri, you do not. You would put them in the Federal program?

Mr. CALLAHAN. That is correct.

Mr. SCOTT. Do you have people whose cover may have been blown?

Mr. CUMMINGS. Do we have people whose covers have been blown? Their identities are known to the criminal element? Yes. But we have not changed—we do not have the authority to change identity or to award fictitious identification, per se. And we also have used the Federal Witness Protection Program.

Mr. SCOTT. Could you comment—I guess one of the questions we have on a Federal level is the public right to know; the local notification versus trying to keep these identities as secret as possible. Do you want to comment any further on that?

Mr. CUMMINGS. Our public records law is quite liberal in the State of Florida. Active criminal investigation information is protected and we can protect that information. As a matter of fact, we sought an opinion from the Attorney General several weeks ago and got some definitive language on this particular issue and we could keep those people confidential.

Mr. SCOTT. In other words, you could notify the local police—are you talking about local police or just the State police?

Mr. CUMMINGS. Our memorandum of understanding would ask that Puerto Rico provide us, our department, the identity of those people. We, in turn, would notify the local law enforcement agency.

Mr. SCOTT. And you do not have any problem with the confidentiality with that?

Mr. CUMMINGS. No, we do not.

Mr. SCOTT. Mr. Callahan, do you want to comment further? Or Mr. Gierbolini?

Mr. CALLAHAN. Just, obviously, if you have automatic notification, how much good is that going to do unless it is shared to some extent? The more sharing you have, then the greater the breach. So it is a catch-22.

I generally tend to trust that in most instances the local law enforcement agency will work it out. I recognize that other States are going to be putting witnesses in Missouri and in my community and I would hope——

Mr. SCOTT. My time has expired. Let me ask one question as follow-up. How much good is done with the local notification? I mean, there are, obviously, risks to it. Does it do any good?

Mr. CALLAHAN. I do not know if you are going to read it off at every roll call and we are about going to tell the officers, We have Joe Blow here and he is a witness. That does the greatest good for the local community, but it also creates the greatest breach.

I am not clear how the Federal Witness Protection Program handles it. I suspect that there are some instances where you should notify and there may be some where the need for security is greater than the obligation to notify.

Mr. MCCOLLUM. Mr. Buyer, you are recognized for 5 minutes.

Mr. BUYER. Mr. Chairman, I have just two areas. One will be a follow-up. Before that, I wanted to ask Mr. Cummings, Florida does not have a formal witness protection program, but you have agreements with other States whereby you kind of act as a coordination for other States? Say if Georgia or South Carolina wants to move

a witness down here, they are going to let you know before they come?

Mr. CUMMINGS. We do have a working relationship with some of our sister agencies in other States that they contact us and we provide them local assistance, including Puerto Rico who has contacted us in the past.

Mr. BUYER. And how long have you known that Puerto Rico has this program of relocating witnesses into the State of Florida?

Mr. CUMMINGS. I think I really became aware of it prior—just prior to the agents going to Puerto Rico about—I believe that trip took place in September. About 2 months.

Mr. BUYER. You have only known for 2 months?

Mr. CUMMINGS. To this extent that the witnesses were being relocated here, that is correct.

Mr. BUYER. So we have a program that has been going on for 10 years and you have only known for 2 months. In the 2 months, how much contact and communication of new witnesses have you done in coordination here just over the last 2 months, then?

Mr. CUMMINGS. We have not received any information as to who is coming in in that period of time.

Mr. BUYER. But you just told me that you had past coordinations with Puerto Rico, relocations to the State. And now you just said that you only knew about this program 2 months ago.

Mr. CUMMINGS. Let me clarify that.

Mr. BUYER. Thank you.

Mr. CUMMINGS. We know periodically that States relocated witnesses to our State, including Puerto Rico. We did not know the extent of this situation where we had 40 witnesses in the Orlando area, and we do not know the extent of other witnesses from Puerto Rico in the other parts of our State. We just learned that information in the last several months, the extent of the witness relocation effort of Puerto Rico.

Mr. BUYER. And you only knew that extent as of September, initiated perhaps by the incident that occurred in June?

Mr. CUMMINGS. That is correct. We became aware that that was going on and we sent agents down there to find out how extensive it was.

Mr. BUYER. To the gentleman from Puerto Rico, I thought it was your testimony that you had had contacts with law enforcement within Miami and Orlando over the past. Is that accurate and true?

Mr. GIERBOLINI. That is correct. There are three specifically that I mentioned. Two of them are agents for Mr. Cummings' agency, and I think perhaps what—we did it informally, "Can you give me a hand in doing this?" And not on a formal, at-the-top basis.

Mr. BUYER. So you have had past communications and coordinations with the Florida Department of Law Enforcement during the past 10 years. The present administration just did not happen to know about the detailed numbers and the scope of involvement of relocation to Orlando, except for the past 2 months? Is that accurate?

Mr. CUMMINGS. Yes, sir.

Mr. GIERBOLINI. For my part, that is correct.

Mr. BUYER. Okay. Thank you.

Mr.—I am going to butcher your last name. I am going to call you Miguel.

In your testimony you stated that the decision whether to relocate a witness outside of Puerto Rico is based on the following factors: One, the danger to the witness if he or she remains in Puerto Rico, and two, whether the witness has relatives or friends on the United States mainland.

In what way is the prospect of danger to the witness weighed against the prospect of danger to the relocation community? What is your criteria there?

Mr. GIERBOLINI. What I said in my statement, and I said answering some questions, is that we believe—that we have worked with these people for a long time. We get to know them. They worked in a voluntary program and stayed with it to secure criminal convictions. We believe that these individuals, that includes victims, pose no threat to the new community. We would not relocate somebody who would be a threat to a new community.

Mr. BUYER. And that is one of your major criteria of consideration?

Mr. GIERBOLINI. It is a consideration at all levels in the program. It is a consideration. We work with people that want to start a new life, that want to help us convict criminals, and that are not a threat to the new community.

Mr. BUYER. My last follow-up, Mr. Chairman, is the criteria for which you are establishing in your protocol, is that what you are trying to set as the uniformity of criteria or that all States are in agreement out there so that we are all on the same path and wavelength as to how you do this balancing test? Is that what we are trying to do here? This is between the two of you. It is your agreement.

Mr. GIERBOLINI. What we are trying to do is formalize a process that affects both of us. And to be—and to communicate better. And in this way we are looking forward to getting the document together and so is Mr. Cummings.

Mr. BUYER. Thank you very much, Mr. Chairman.

Mr. MCCOLLUM. Mr. Barr, you are recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

I am still somewhat astounded by the scope of this program in Puerto Rico. There have been nearly 2,300 participants just since 1987, which during a comparable period even exceeds the Federal Witness Protection Program for the entire country.

The Federal experience, Mr. Gierbolini, was just that after the Federal Witness Protection Program was created in 1970, there was—seemed to be so many people that were getting put into it, the Federal Government had to take another look at it and tighten the criteria, and that has slowed down the number of people going into the program so that it can both be administered properly as well as I think protecting the security of the witnesses as well as the security of the communities.

Do you think it might be time for Puerto Rico to look at this program, maybe just galloping along a little too quickly and too many people are being placed into it? You seem to have a huge bureaucracy that has built up. Does that concern you at all?

Mr. GIERBOLINI. Actually, the numbers might be misleading. We do a lot of services and we are counting people that we only drive to the courthouse or take them to the doctor because they need protection while being driven, or people that have to stay in a hotel for a couple of months. And I think that the Federal Witness Protection Program counts only those people that are relocated and given a new identity. We are not comparing the same thing.

I think we are very much, in Puerto Rico, looking to make sure that we get more people to testify in criminal trials. One part of that is the witness protection program. We are trying to make it more appealing for people to become involved in criminal prosecutions and that I think fairly states my position.

Mr. BARR. Your first point is a fair one. I see what you are saying. That there are 2,300 people; that takes into account those that could have been for minimal services as well as those provided with the more extensive relocation services.

Do you have the figures, then, of the 287 people that have been placed in the witness protection program from 1987 to 1996, how many of those fall into the category of relocation either within or outside of Puerto Rico? Do you have that figure?

Mr. GIERBOLINI. We have relocated outside of Puerto Rico, 329. Within Puerto Rico, I could get it for you.

Mr. BARR. If you could provide that, it would help give me a better feel for the scope of the program because it looks perhaps much more extensive than it really is with these statistics.

Mr. GIERBOLINI. With pleasure.

Mr. BARR. When you list, Mr. Gierbolini, page 3 of your testimony, you list seven services provided in your program and seven is a catch-all. Can you give me some illustrations of what number seven means, "other services?"

Mr. GIERBOLINI. Going to a doctor; going to see the prosecutor; going to the crime scene. Stuff that requires our agents to be with a witness because the witness has to be taken out of our safe house. These actions help build evidence or help the person in their life. They have to go to the doctor, they have to do things. And that is what I mean in most cases.

Mr. BARR. Okay. That would not provide for, getting back to one of my earlier questions, provision of identification documents, new identities or whatnot?

Mr. GIERBOLINI. Again, the statute provides that we can change the name of the person, but I do not recall one instance that we have done it, so it is not included there.

Mr. BARR. Thank you.

Mr. MCCOLLUM. Thank you very much, Mr. Barr. Mr. Gierbolini, has Puerto Rico ever used the Federal Witness Protection Program?

Mr. GIERBOLINI. I do not know of one case that we have used it. I am certain that we have. But in the last few years, since I have been in my position, there has been talk several times because some of our witnesses are witnesses that might be used in Federal cases, but I have not seen any that they have taken into their program since I have been there.

Once again, I will be happy to check that out with the U.S. attorney there and report back to the committee.

Mr. McCollum. Well, we would appreciate it. And again, I want to thank the entire panel for coming today. Some of you have come some distance, Mr. Gierbolini and Mr. Callahan. We appreciate that.

I want to emphasize with respect to Puerto Rico and also Missouri and other States, that witness protection is important, and we do not want to do anything in this subcommittee to discourage it. It is a very, very important part of criminal prosecution, and I think, Mr. Gierbolini, you made it very clear today how important it is to obtaining convictions in Puerto Rico. The same can be true in all of our States, and certainly we have got to be able to have good working programs to achieve such positive results. And I think by coming up here today you have clarified a good deal for all of us.

Puerto Rico in particular is a small island commonwealth, and there is a need to place witnesses outside of it, and some of those witnesses undoubtedly should be in Florida. We simply are all concerned that everything be done above board and happily and cooperatively, and that apparent progress is being made. By your coming today, I think we have made a lot of good information available to not only the people of central Florida, but also to the people of the Nation. As a result, this committee can better judge how we might, if necessary, proceed to facilitate more information sharing and protection in the witness programs around the Nation, not just the one involving Puerto Rico.

Thank you very much for coming.

The witness panel is excused. Thank you.

I would like to now call our second panel, which is really one witness from our Federal Program. Our final witness is Steven T'Kach. He is the Associate Director of the Office of Enforcement Operations in the Criminal Division, United States Department of Justice. He began his career with the Department of Justice in 1990 as a trial attorney and special liaison officer in the Electronic Surveillance Unit in the Office of Enforcement Operations. In 1992, he was promoted to be the Electronics Surveillance Unit Deputy Chief.

Prior to his career with the Department of Justice, Mr. T'Kach was a county director of emergency communications and 911, as well as the deputy director of emergency development. He has also served as special assistant district attorney and a deputy sheriff. Mr. T'Kach holds an undergraduate degree in sociology, in criminal justice and business administration from the University of Wisconsin-River Falls and a juris doctorate degree from the William Mitchell College of Law in Minnesota.

We thank you again for coming today. Your statement will be admitted into the record, and you may proceed to summarize it or otherwise proceed as you wish, Mr. T'Kach.

STATEMENT OF STEPHEN J. T'KACH, ASSOCIATE DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. T'Kach. Good afternoon, Mr. Chairman and members of the committee. My name is Stephen T'Kach, Associate Director of the Office of Enforcement Operations, Department of Justice, and I

have primary responsibility for the Federal Witness Security Program. I am pleased to appear today as you hold this hearing regarding witness protection programs.

My brief testimony today will focus on the Department's 25 years of experience in operating a witness protection program and especially on the ways this experience may assist States and other jurisdictions in their efforts to protect witnesses.

As you recognized previously, Mr. Chairman, the Witness Security Program is considered by law enforcement nationwide to be one of the Federal Government's great success stories, and it has evolved into one of the most effective and successful law enforcement tools ever developed against organized criminal activity of any type. Since its inception in 1970, the Federal Witness Security Program has resulted in thousands of convictions involving members of major organized crime groups and other dangerous criminals.

The Program was created when both the Department and Congress recognized the fact that many significant prosecutions either failed or were not brought because of the government's inability to produce witnesses who were both knowledgeable about the crimes committed by the defendants and willing to testify against these oftentimes dangerous criminals. Organized crime leaders had developed a reputation of using whatever measures were necessary to silence witnesses, including murder. Without a mechanism to assure potential witnesses that they could testify without reprisal and to provide for the protection of witnesses and their families, we could not successfully prosecute those responsible for society's most serious crimes.

During the first decade of the Program, the Department was challenged by the large number of witnesses entering the Program, combined with the lack of specific guidelines to operate the Program. These problems, among others, led to congressional hearings in 1982. As a result of those hearings, and a Department request for Program reforms, Congress enacted the Witness Security Reform Act of 1984, which provided the Department with a comprehensive statutory scheme to guide the Program.

This law, under which we had operated for the past 12 years, provided new procedures designed to ensure both the protection of witnesses from retaliation and the protection of the community from possible future crimes of a protected witness. The Program's admission criteria were modified to include additional requirements to be considered by the Office of Enforcement Operations.

Mr. Chairman, as you mentioned earlier, some of these criteria are a law enforcement assessment of the risks a witness might pose to the community and a determination as to whether the witness' testimony outweighs that risk; psychological examinations for all adults entering the Program who are not incarcerated; and a completion of a memorandum of understanding between the Department and the witness detailing what is expected of the witness while the witness is in the Program.

As Mr. Barr knows, the review process for admission into the program is extremely rigorous. The initial application to use the Program is submitted to OEO by a Federal prosecutor. OEO requires detailed information about the significance of the case, the

prospective defendants, the nature of and the need for the witness's testimony, and the anticipated benefits of a successful prosecution.

For witnesses accepted on an emergency basis, a preliminary assessment of their Program suitability is made immediately, and all of the other required information must be forwarded to OEO as soon as possible thereafter.

A combination of our comprehensive application process, along with the refinements in the admission criteria, has resulted in a substantial decrease in the number of witnesses admitted into the Program each year. In the mid-1970's, the number of witnesses entering the Program averaged 450. Following enactment of the 1984 legislation, and stricter administration of the Program, the number of admissions dropped sharply, with only 129 witnesses being admitted in fiscal year 1996, including the emergency authorizations. Furthermore, of those witnesses accepted into the Program since 1993, over half are convicted defendants who were placed in protective custody in prison where they will serve their sentences.

In the last 25 years, as you mentioned, over 6,600 witnesses, along with over 8,000 family members, have been provided services as participants in the Program. Not one of these witnesses or family members has been injured or killed while following the established Witness Security Program rules. By any standard, that is an enviable record.

Yet we recognize that such witnesses could abuse their protected status and commit further crimes while in the Program. And although the recidivism rate for relocated witnesses is less than half the national average, any criminal activity by a Program participant is of serious concern to us. Therefore, we have taken steps to prevent those who would do so from capitalizing on the veil of secrecy provided by the Program.

For example, several years prior to the passage of the 1984 Reform Act, we voluntarily began the process of notifying law enforcement authorities of the presence in their communities of individuals in the Program with a criminal record indicating a history of violence or sexual crimes, and, recently, certain drug offenses. However, because of security concerns, the process of local law enforcement notification is a very delicate issue.

The Witness Security Program requires maximum security to ensure witness safety. Nothing would be more devastating to the integrity of any witness security program than the loss of a protected witness. Thus, even within the Federal Government, information related to the new identity or location of a protected witness is held on an absolute need-to-know basis. For example, neither I nor anyone on my immediate staff knows this information. In fact, I do not know who knows the information. By sharing this information, no matter with whom, we increase the risk of danger to the witness.

As an added note, with new identity changes we also have a system in place with the Federal Bureau of Investigation to tie together new and old names should a law enforcement agency run either one. If protected or formerly protected witnesses commit new crimes after relocation or violate release conditions, they will face the consequences of their actions. The Program is not a shield for witnesses to hide behind should they engage in criminal conduct.

We also mandate random drug testing for those witnesses with a history of drug usage.

While the Department believes that the Program is effective in helping law enforcement to combat the Nation's major crime programs, we are not content with resting on the Program's successful record. Therefore, the Department is currently in the process of studying the feasibility of providing a different level of witness security services in order to help Federal prosecutors who have witnesses unable or unwilling to be placed in the full Program. Additionally, because many State and local witnesses who might need protective services or assistance are outside the scope of the Federal Program, the Department has, over the years, assisted non-Federal agencies by providing education and training on the mechanics of an effective witness protection program.

I appreciate this opportunity to discuss the Program and hope this statement will assist the committee in its review.

[The prepared statement of Mr. T'Kach follows:]

PREPARED STATEMENT OF STEPHEN J. T'KACH, ASSOCIATE DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee: my name is Stephen T'Kach, Associate Director of the Office of Enforcement Operations, and I have primary responsibility for the Federal Witness Security Program. I am pleased to appear today as you hold this hearing regarding witness protection programs. My testimony today will focus on the Department's 25 years of experience in operating a witness protection program and especially on ways this experience may assist states and other jurisdictions in their efforts to protect witnesses.

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During the first decade of the Program, the Department was challenged by the large number of witnesses entering the Program combined with the lack of specific guidelines to operate the Program. These problems, among others, led to Congressional hearings in 1982. As a result of these hearings and a Department request for Program reforms, Congress enacted the Witness Security Reform Act of 1984, which provided the Department with a comprehensive statutory scheme to guide the Program. This law, under which we have operated for the past 12 years, provided new procedures designed to ensure both the protection of witnesses from retaliation and the protection of the community from possible future crimes of a protected witness. The Program's admission criteria were modified to include additional requirements to be considered by the Department's Office of Enforcement Operations. Some of these criteria are: a law enforcement assessment of the risk the witness might pose to a new community and a determination as to whether the witness's testimony outweighs that risk; psychological examinations for all adults entering the Program who are not incarcerated; and the completion of a memorandum of understanding between the Department and the witness detailing what is expected of the witness while the witness is in the Program.

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In the last twenty-five years, over 6,600 witnesses, along with over 8,000 family members, have been provided services as participants in the Program. Not one of these witnesses or family members has been killed or injured while following the established Program rules. By any standard, this is an enviable record.

Yet, we recognize that such witnesses could abuse their protected status and commit further crimes while in the Program. And although the recidivism rate for relocated witnesses is less than half the national average, any criminal activity by a Program participant is of serious concern to us. Therefore, we have taken steps to prevent those who would do so from capitalizing on the veil of secrecy provided by the Program.

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While the Department believes that the Program is effective in helping law enforcement to combat the nation's major crime problems, we are not content with resting on the Program's successful record. Therefore, the Department is currently in the process of studying the feasibility of providing a different level of witness security services in order to help prosecutors who have witnesses unable or unwilling to be placed in the full Program. Additionally, because many state and local witnesses who might need protective services or assistance are outside the scope of the Federal Program, the Department has, over the years, assisted non–Federal agencies by providing education and training on the mechanics of an effective witness protection program.

I appreciate this opportunity to discuss the Program and hope this statement will assist the Committee in its review.

Mr. McCollum. Thank you very much.

I couldn't help but note one qualifier you had about the Federal Witness Protection Program. You said, "Not killed while following established Program rules." You had some people killed not following the rules?

Mr. T'Kach. We do not track that; however, information passed on by various deputy U.S. marshals assigned to the Program indicated that witnesses who violated their security procedures by either—now through caller ID—but in the past made phone calls and notified family members or associates or acquaintances in their

danger area as to where they were, or returned to their danger area, some of them have been killed.

Mr. McCollum. You heard the discussion that occurred in the previous panel about the use of witness protection State programs. I gather that very few States use the Federal Program. Is there any use of it today, in the last couple of years, or since 1984 when the laws were changed? Do you have States calling you at all, or is this just an extraordinarily rare phenomenon now?

Mr. T'Kach. The answer to your question is yes. The States do occasionally call on us. They want us to protect their witnesses, or they want the education and training to help them develop a program. Over the last three fiscal years, I believe we have put in about 20 State witnesses into the Federal Program.

Mr. McCollum. Do you know of any reason why there would be so few compared to what one would assume would be a lot of State witnesses out there who might be in need of protection due to the seriousness and the magnitude of their knowledge and the organized criminal behavior of the trials they might be involved in?

Mr. T'Kach. A couple of different factors. First of all, we always ask for reimbursement. I know it is usually the States asking the Feds, but we sometimes put our hands out as well, and we will ask the State for reimbursement for the protection of any witness.

Second of all, an application for the Federal Witness Security Program must be sponsored by a U.S. attorney. So if a State prosecutor wants to bring a witness into the Federal Program, as a number of them indicated they had, they would have to first go to the local United States attorney and get that individual to sponsor the witness into the Program. I think that it is a combination of local prosecutors—I do not know if I want to use the word "afraid," but perhaps their lack of knowledge about the Federal Program, or the proverbial red tape of having to go through the U.S. Attorney's Office, the fact that we may ask for reimbursement, which we do, may tend to——

Mr. McCollum. Do we advertise the Program? Is there any regular channel of communication to local government entities or State departments of law enforcement, like the Florida one here, that tells them about the Program that the Federal Government has and how they might use?

Mr. T'Kach. Nothing on a regular basis.

Mr. McCollum. Is it true that no one in your office and apparently no one in the Justice Department was aware of the Puerto Rican program prior to the incident that occurred here in Florida a few months ago?

Mr. T'Kach. That is correct.

Mr. McCollum. Is it true that your office and the Justice Department have little or no knowledge, at least did not until the last month or two, of any of the State witness protection programs?

Mr. T'Kach. The Department commissioned some type of study a while back to look at some State and local programs. I do not know how comprehensive. I do not think the final study is out, but the Department has never undertaken a formal study of each and every witness security program done on a State and local level in the United States.

Mr. McCollum. We have, I guess, collected this information on the State legislative procedures at the various depositories of information, but the records in front of the subcommittee indicate that only six States have formally enacted by statute witness protection programs, and we can only document three other States that have any program informally, except for Puerto Rico. Does that surprise you? Do you think that the case may be that we do not know of more State programs because of a lack of documentation?

Mr. T'Kach. I think that number would be conservative. Having spent nearly 11 years in local law enforcement, and my experiences now in the Federal program, I think the gamut of programs run from everything from a coffee can, petty cash fund that the people pull out and say, here, go hide out with the relatives, all the way up to something like Missouri, where they also have a formal statutory program.

Mr. McCollum. You do training and so forth, and yet you do not have this information. Is it not something that ought to be gathered; not that the Federal Government ought to control it, but for the purpose of having a data bank on what is going on in the States, especially if the States are moving witnesses in some manner from one State to another?

Mr. T'Kach. I am not sure what the Federal Government's role would be in gathering that information, Mr. Chairman, because I am not sure what we would do with it once we had it. We do on an ad hoc basis, if a local law enforcement agency or State law enforcement agency comes to us and says they would like training, we will provide training. Whether they use that training or not is another question.

We do provide training for foreign governments, as well. All of these entities come to sit down and discuss it with us, and they go back to their respective jurisdictions, and we do not always know whether they have taken our advice.

Mr. McCollum. Please tell me about the notification requirements of relocation under Federal law. Do you notify—if you put a witness in Orlando, do you notify the police department in Orlando now? Do you notify the State of Florida under the Federal Program?

Mr. T'Kach. We may under certain circumstances.

Mr. McCollum. What would those be, and how would you determine them?

Mr. T'Kach. Okay. The determination as to whether a local law enforcement notification will be made is based on a number of criteria: The law enforcement assessment of the risk that the witness poses to a new community, the criminal record of the witness, a psychological examination of the witness, and an assistant United States attorney's application concurring with the assessment of the risk, along with just general factors we know about having placed other people in the Program.

We will look at all of that criteria to determine whether or not somebody has a recent history of violence or is a sexual predator and whether notification is appropriate. That recent history of violence could include something like—and I do not mean to understate this by any means—domestic violence. For example, we had a case the other day where the individual's violent record only re-

lated to domestic violence; however, when he went into the Program, we mandated local law enforcement notification. He, in fact, punched out his wife, and I punched him out of the Program for that act.

It is not every crime and not every jurisdiction. It is generally the recent history of violence or sexual predator. At the request of Acting Assistant Attorney General John Keeny, we are investigating the drug offenses to determine which of the drug offenders we will be making notification for.

Mr. McCollum. Mr. Scott.

Mr. Scott. Mr. T'Kach, am I right in assuming that all of the witnesses that you are protecting are those that have been secreted away with new identification?

Mr. T'Kach. Yes, the Federal Witness—well, let me qualify that. The Federal Witness Security Program has had a number of different levels of services provided the witnesses. Generally, everything we see on TV and the movies is the Federal Witness Security Program operated by the Marshals Service, the Relocation Program. Generally, when the marshals relocate, they do change names and the identity, then relocate.

There are circumstances—for example, in the District of Columbia there is the short-term program that is a pilot program between the District of Columbia, the Justice Department, the U.S. Attorney's Office and the Marshals Service, which is short-term protection, no identity changes. We just move people out during the course of the trial and bring them back.

For a while, Mr. Congressman, we had a limited services program. We just relocated people out without an identity change. We do not put too much value in that, and we are currently evaluating eliminating that particular program. But to answer your question, we normally change the name and identity of an individual.

Mr. Scott. For those short-term—I think I had the same reaction to the qualifier that Mr. McCollum had when I saw it. "If" they followed procedures, they are going to be all right. What kind of danger do the people actually face after the proceedings are over? We have heard that if it is an organized crime continuing operation, that witnesses who have testified against the organization would be in trouble. Do you have other categories of people who would still be in danger, significant danger, after the trial is over?

Mr. T'Kach. The general focus of the Federal Witness Security Program is to break up organized criminal activity of any type, unlike some of the State and local programs, and to a certain degree unlike the witness security program in the District of Columbia, generally. For example, of the 129 witnesses we put in the Program last year, last fiscal year, of those individuals who have provided significant information in significant organized crime cases, and I just do not mean the La Cosa Nostra, but significant organized crime organizations, they have the resources. Once you dismantle that particular group and put those individuals in prison, the reason that the threat continues to exist is because they are part of an organization which still has the ability to track down these witnesses and injure or kill them. And that is the criteria that we look at in the Program is what is the threat, not just to the witness dur-

ing the time just before or during trial; what is the long-term threat to the witness?

We do not put anybody in the Federal Witness Security Program who does not look like they will have a long-term threat.

Mr. SCOTT. Can you give us an idea of how significant the threat, the witness threat issue, is? How many witnesses are being intimidated? How many cases are you not being able to bring because witnesses will not testify? How significant a problem is it?

Mr. T'KACH. The exact numbers I do not have, Mr. Scott.

Mr. SCOTT. Is it something that the prosecutors—Mr. Barr was a former prosecutor.

Mr. T'KACH. Maybe Mr. Barr would be better suited to answer that question.

Mr. SCOTT. How often do prosecutors have to face this problem that you are helping to solve?

Mr. T'KACH. I think prosecutors are facing the problem a lot more than the 129 witnesses that we put in the Program last year. We have extremely rigorous application procedures and requirements. For every one that we put in, we probably rejected at least two, and to be perfectly candid with you, Mr. Scott, there are a lot of Federal prosecutors who know what is involved in the Federal Witness Security Program and do not choose to put their witnesses through that and will not make application for that reason.

Mr. SCOTT. How do witnesses get jobs and have any kind of outside-of-the-house activity if they are in the Program under those conditions where their identity cannot be exposed? How do they live a normal life?

Mr. T'KACH. Once we have relocated them?

Mr. SCOTT. Right. And do you provide 24-hour security once they are relocated?

Mr. T'KACH. No, sir. I think generally, maybe just a very brief background on the Program. When an individual is authorized for relocation services, the marshals will scoop them up as soon as they can, conduct preliminary interviews, and they will take them to what we know as a safe house. There are psychologists there, vocational assistance, educational assistance, employment opportunity people who will discuss backgrounds with these individuals: What have you done? We have two psychological evaluations that are generally done, one by us, and it is done by the courtesy of the Bureau of Prisons, and one by the marshals. This is to evaluate the risk to the community. Those things tell us about their skills, their I Q, what is their temperament, do they have people skills, or are they better working at Ford putting on hubcaps on the assembly line?

When they get to the marshals, those things will be done. We will take the old identity away and take that individual to a new relocation area. They will have protection during that entire time. Once they get to a relocation area, we are taking them there because we hope, number one, they have never been there before; number two, they do not know anybody there; and three, no one there knows them. So the fact that the marshals have made the decision to relocate them there indicates that it should be a safe area.

Once they are there, there is no 24-hour around-the-clock protection. They will be assisted with housing, transportation, employment opportunities to help them assimilate in the community, and we will slowly back out, and within 6 to 18 months they do not see a marshal inspector again unless there is an emergency or they need to be transported to a trial, at which point they will have round-the-clock protection.

Mr. BUYER. On the issue of training, I have gotten the impression that it is more ad hoc. Is that about right? When the request comes in, you provide it; other than that, you do not have any formal programs with regard to training?

Mr. T'KACH. That is absolutely right. I live out in Maryland, and I happen to know that one of our local areas has a local program, and I went over just to chat with them and ask, how do you do it, and I learned a lot of things about their local programs that I never thought about; going to the board of education and moving children through schools and such. And I asked that individual, whether he thought the Federal Government should provide more training at the Federal Law Enforcement Training Center on local protection programs.

Mr. BUYER. That is what I am thinking about. We have codification of our laws, and, sure, States can do certain things, and we like that States' rights thing, but we also like some form of uniformity that comes under the umbrella of justice, right?

Mr. T'KACH. Absolutely.

Mr. BUYER. So I have been thinking about what is the Federal Government role? Mr. Barr opened up about using the word "nexus." We have received testimony here about Puerto Rico and the State of Florida now coming together in this memorandum of understanding, perhaps other States moving in that area if Governor Chiles takes that to the Governors' conference, and now we are going to have certain criteria or protocols used.

It seems that we are moving perhaps in that trend, then, for us, meaning the Federal Government, or you to coordinate with the Congress when you need additional funds, or to have some kind of training or formal program for training, notifications to the States. I see the current trend toward that coordination growing. And if you would concur, please coordinate with us, and we will be more than happy to work in that direction. I think the Chairman would be more than receptive to that. I do not speak for the Chairman, but——

Mr. MCCOLLUM. Will the gentleman yield?

I think there is seemingly an absence of State uniformity and an absence of any real notification standards. It seems to me that there should be defined standards. But I do not know enough about it.

Mr. BUYER. I do not either, Mr. Chairman, I just think that that is where the trend is going. I do not want to get political. Mr. Scott and I sometimes on the committee will get into the thing of States' rights and Federal Government and what is the Federal Government's role. The Federal Government has a relevant role to play.

Mr. SCOTT. Could I quote you on that?

Mr. BUYER. Absolutely. Absolutely. We got abused in the last Congress. We have no interest in returning us to the days of the

Articles of Confederation. The Federal Government has a relevant role.

I think you will find this Member one of support, and you have heard from the Chairman and others to move more toward that training and unification as you monitor—I am sure you are going to be watchful in regards to the Governors' conference moving in that direction.

Mr. T'KACH. Absolutely.

Mr. MCCOLLUM. Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman. I would like to commend Mr. T'Kach and the Department of Justice, because in my experience, and I think they continue to improve the Program, it is an outstanding program and really could be a model for what States might be looking at.

It is the application procedure as well as changes in the Program have to adhere to a very rigorous set of criteria, and I know that from having been a United States attorney, there were many instances in which I was involved in making an application. But it is a very rigorous program, as it should be, and it is very, very well monitored.

Could you just review very briefly, Mr. T'Kach, the conditions under which the State can, under current law, seek to utilize the Federal Program?

Mr. T'KACH. A State can make application at any time, through a Federal prosecutor through the U.S. Attorney's Office and ultimately signed off by the U.S. attorney, for the Program. What we would review is the same criteria that we would apply to a Federal application, we will apply a State application: Is this a significant case? Because even if we were to seek—well, we seek reimbursement, and even if we were to receive reimbursement from the State—which we do not always do. We waive it sometimes—it does not involve the reimbursement of the salaries and wages of the marshals and such. So it does cost the Federal Government to take in a State witness.

But we would look at the same criteria for a State witness that we would for a Federal. And to be perfectly honest with you, when I testified before the Senate Committee on the Judiciary earlier this summer, I told Senator DeWine, in fact, given the downsizing in government, and we have been affected by that, the number of marshal inspectors has come down, and some of the staff have not been replaced in our office, and the marshals—my first priority is to the Attorney General and the Federal prosecutors, and the resources have to go there first. If we have available resources after that, we are happy to help assist the States as we do with training and education. But we look as hard at State applications as we do at Federal applications.

Mr. BARR. You were here for the testimony earlier, I believe, and——

Mr. T'KACH. Yes.

Mr. BARR [continuing]. And heard my line of questioning for Mr. Gierbolini. I have a serious concern with what Puerto Rico appears to be doing here. I think I made my concerns known to him as well. The Federal Government has to relocate witnesses in security circumstances to the States. There is no Federal property, no Federal

enclave where the Federal Government can do that. So clearly the Federal Government has to relocate these people somewhere, and it has to be within one of 50 States or in the District of Columbia.

A State's problem is a little different, and I do not think there is any Federal role in telling the individual State or commonwealth what it must do to provide protection for its witnesses or victims. I think that when we get involved with a problem like Puerto Rico has here, where they are exporting these individuals to other States, then I think there is a problem. I do not think they have any inherent right or need to do that, like the Federal Government does, and hence I think some of the concerns underlying these hearings.

Do you think that these are legitimate concerns that I have and that other folks have? And if so, is it something that could be addressed by change to the Federal Program, somehow making it not necessarily easier for State officials to seek admission into the Program of certain witnesses, State witnesses, to require the reimbursement or whatnot? It may even be cheaper for the States. I do not know how much Puerto Rico spends on all of this. They have a fairly large bureaucracy. Or is it more properly handled by mandatory notification when an individual, whether under the Congress or—but the Federal nexus would be taking the witness from one State and placing him into another through a Federal law that mandates notification? Could you sort of give me preliminary thoughts on those questions?

Mr. T'KACH. Having spent 11 years in local law enforcement, I was also concerned when the guys in the dark suits showed up and said they were with the Federal Government, and they were here to help me.

I think the Department shares some of the concerns that have been expressed today about States' rights and where does the Federal Government's role come in. And certainly I think if you look at the Federal Witness Security Program and the way we have done notification, it appears that it has worked. Our recidivism rate of relocated witnesses is less than half of the national average, and one thing we——

Mr. SCOTT. The national average of what?

Mr. T'KACH. The national average of recidivism in the last 3 years is just over 40 percent. Our recidivism rate for relocated witnesses over the last 3 years is less than 19 percent.

One of the things in addition to notifying law enforcement, we also tell the witness that we have notified law enforcement. Our hope is that this might keep them on the straight and narrow, knowing that the local cops know that this witness and his family, or whatever the case may be, are in the community.

I have concerns—and perhaps because we have not studied it is why we have concerns—of the Federal Government perhaps mandating that States notify each other. What I heard today between the Representatives from Florida and the Commonwealth of Puerto Rico certainly sounded like a good beginning: First of all, the memorandum of understanding; the fact that I believe Governor Chiles is looking to go to the National Governors' Association.

I think there are other avenues before we look at a Federal legislative fix or an executive fix, and that may be the National Associa-

tion of Attorneys General and a number—IACP, National Sheriffs' Association, National Association of District Attorneys; some type of memorandum of understanding or interstate compact for witnesses. I think there are some other avenues that these States could go to before the Federal Government comes in with clout and the power of a Federal fix.

As far as expanding the Federal Program, for example, of the 129 witnesses we put in the program last year, 77 of them went to Federal Bureau of Prisons custody because they have sentences to serve, and the remaining went to—52 went to the United States Marshals. Well, we have 50 States. On average if we took one witness from each of the 50 States and put them in the Program we would equal our annual Federal Marshal total. That is added on to the other 6,660 witness that the marshals have to maintain. They are not all active, obviously.

I think any trend to go down the road of asking the Federal program to expand to pick up State and locals will require a significant increase in the bureaucracy, more marshals, more Justice personnel. That is something that Congress has to decide. We can certainly make recommendations, but it is certainly something that Congress would have to make a determination that they would want to expand the bureaucracy and be responsible for it.

I do not mean to sound like a Federal elitist. States can move witnesses around. If something happens, the States have to work it out between them. Once they come underneath that Federal umbrella, then the monkey is on the back of the Federal Government, and we have to live with that. I would, as they say, tread lightly down that road.

Mr. BARR. Thank you. I appreciate your thoughts.

Mr. MCCOLLUM. Do you have a separate line item of any sort in the budget to do the training of the State witness protection programs, or is this just something you do casually as you have funds and as somebody requests that sort of a normal thing?

Mr. T'KACH. I can speak for the Department—I mean, the Office of Enforcement Operations. We do not. I do not know in the marshals' program. I am not aware that they do. Although we do provide—we have witness security inspector schools for deputy marshals that are becoming witness security inspectors in Glynco at the Federal Law Enforcement Training Center, and we do provide training for our staff, and sometimes we do pick up people, non-Federal law enforcement types that come.

Mr. MCCOLLUM. Maybe you do not need the authority from our committee through law technically to do this, but perhaps if we provided that, and perhaps if we provided some funding authorization, then it would be easier for you to get an appropriation for training on an affirmative basis; that is for outreach programs to these States. It just seems to me that maybe that is where we are lacking here, is that if the States could have access to the reservoir of information you have, then they would benefit; that would be a positive thing—and that is not mandating anything to the States, and that is not taking over State witnesses.

Mr. T'KACH. If I may, Mr. Chairman, I think you are absolutely right. I enjoy training. I teach witness protection and I still teach Title III, even though I have moved out of that area, and we teach

to State and locals and so on and so forth. And I think that it is an appropriate task for us to a certain degree.

The only caveat here is that what I have heard is that a lot of these State and local programs differ greatly from the Federal program in that they are sending them on to live with relatives, which we would never do. They are not changing their identities, which we do do.

When Puerto Rico moves a person here, as we know from the incident when the Puerto Rico armed cops were here, and we almost had a Miami-type shoot-out, we have the authority to act in each of the jurisdictions in which we place witnesses, which States do not. And I think that goes to Representative Barr's comment about what could the Federal Government do if we expand the program. But the marshals have authority everywhere they go, and the States do not.

That is a problem. I know there is some legislation to allow arming, I think, of local law enforcement officers outside of their own jurisdiction, but those are some of the issues that you would certainly want to look at. There is some difference between the local programs, which tend to be short-term, move the witnesses out during the trial and return them, and the Federal Program, which goes after major organized crime where these people can never return home and we need to hide them on a long-term, permanent basis.

Mr. McCollum. Well, I can understand that distinctions exist, and maybe the degree or the training or interfacing with the Federal program is not necessarily going to be very great. But I do look at the recent situation you just mentioned which the Florida troopers thought the officers were criminals posing as FBI agents and the officers thought the troopers were assassins sent to kill their witnesses. That is pretty high drama, and that is not something you want to see happen. That is probably as significant a thing as anything.

You could have Federal and State law enforcement officials involved in a shoot-out with someone from another part of the country without knowing who they were, do you have any suggestions on how you keep that from happening?

Mr. T'Kach. The marshals have specific guidelines on what occurs. If a local law enforcement officer were to stop a marshal's vehicle when they have a principal witness in the vehicle, there are procedures on how that is handled. I cannot speak for the marshals. That is one of the technical things, and I can ask perhaps that they respond to that. There are some procedures in place that go back to their training, how you handle the logistics.

Mr. McCollum. And that goes back, again, to the point we are making that though I do not want to see a great big new Federal program, and we are talking about 50 States, not all of whom have a program at all——

Mr. T'Kach. Correct.

Mr. McCollum [continuing]. But if you are going to have any chance of avoiding these types of problems, somebody has got to address them. Governor Chiles going to the Governors' conference and presenting this idea for a compact is not a bad idea. But having the additional resource of somebody saying that there are al-

ready some ground rules—not only that we share information, but that we have some normal process of how to conduct the programs—would be terribly meaningful. So I am open to those suggestions. I think that the committee is open to them, and perhaps we can pursue that through our staff.

I do not know if the other Members have follow-up questions. I don't want to deny anybody.

Mr. Scott.

Mr. SCOTT. I just have a couple of questions. I wanted to follow up on notification. Is there really that much potential benefit in a notification process? We could see the risks of exposure and the secrecy of information may be compromised. Is there much that can be gained by local notification on a mandatory basis?

Mr. T'KACH. On a mandatory basis, no.

Mr. SCOTT. On those cases where notification would be appropriate, do you know, can you figure those out, and could you do that without it being mandatory?

Mr. T'KACH. If I understand your question, we have certain cases now that internally we mandate that we make a determination that local law enforcement would be notified.

Mr. SCOTT. Other than those where you notify now as a matter of course, is there any benefit for additional notification on a mandatory basis?

Mr. T'KACH. No. I don't see it.

Mr. SCOTT. We passed a sex offender notification law. Did we have a witness protection exception to it?

Mr. T'KACH. I am not sure which statute you are referring to.

Mr. SCOTT. We passed a sex offender notification law.

Mr. MCCOLLUM. That is correct, we did. Sexual predator.

Mr. SCOTT. I asked if it had an exception for witness protection plans, and I think the answer is no.

Mr. T'KACH. The answer is I do not know, Mr. Scott. I can get an answer.

Mr. SCOTT. And if we did not, I would assume that you would want one?

Mr. T'KACH. Yes, in the VCCLEA, the Violent Crime Control and Law Enforcement Act that you passed in 1994, introduced after an incident in Delaware, that statute provides mandatory notification of law enforcement of people on parole and probation. In that statute there is an exemption for witness security. That is usually our general request is that there is an exemption, and then that the Department, at the discretion of the Attorney General, that she be permitted to determine the local law enforcement notification requirements.

Mr. MCCOLLUM. We will have to look at that, Mr. Scott. I really do not know myself.

Mr. SCOTT. Is there anything else that we ought to be doing in this area?

Mr. T'KACH. From the Federal Government? From Congress?

Mr. SCOTT. Right.

Mr. T'KACH. I think, you know, I always hate to propose studies because that sounds bureaucratic, but, you know, when I thought about this whole thing, and I read this, and I thought about it on the plane coming down, I am not sure exactly what the problem is.

I mean, I have heard everything today. I am not sure that we have exactly defined the problem, nor do we know the scope of how many programs are out there, as the Chairman alluded to.

Perhaps the committee could undertake a study of how many programs are truly out there, what is really going on out there, and are there really problems. In the over 25 years that the Federal Witness Security Program has been in operation, this is the first time an incident of this light has ever come to the Department's attention. So I think before we overreact and put the cart before the horse, we should probably study the scope of the problem and determine if we really have a problem.

Mr. SCOTT. In this area I would assume that you would expect problems just by the nature of what you are dealing with. And some we cannot solve with whatever we do. We may create more problems and solve some problems.

Mr. T'KACH. That is always a risk you run.

Mr. MCCOLLUM. Thank you, Mr. Scott.

Mr. Buyer.

Mr. BUYER. I just want to make a comment. Your last comment was very intriguing. The purpose of these type of field hearings and oversight hearings is for us to be very open and be very good listeners. I think if Americans have a character flaw, it is that we are sometimes so anxious to move toward solutions that we do not sometimes spend enough time to understand the problems. So I welcomed your comment.

I yield back.

Mr. MCCOLLUM. Mr. Barr.

Mr. BARR. Nothing further. I thank you much for these hearings, and particularly for this very enlightening testimony. I think it places a lot of this in a very good perspective.

Mr. MCCOLLUM. I thank our witness for coming. Mr. T'Kach, we know that you came a distance, and we will have a definite follow-up with you on the Federal Program to help you implement some training.

And I thank my colleagues for coming the distance they did to come down here. I do not get the chance to have you in my district very often, and unfortunately the timing of this did not work too well.

Mr. BUYER. Would you like to return with me to the snow flurries tonight?

Mr. MCCOLLUM. I think I will wait for a different time of year to go to Indiana, Mr. Buyer. Thank you.

With that, this hearing is adjourned.

[Whereupon, at 3:07 p.m., the subcommittee adjourned.]

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